

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
2.16
(ID # 3839)

MEETING DATE:

Tuesday, April 11, 2017


FROM : TLMA-TRANSPORTATION:

SUBJECT: TLMA: TRANSPORTATION DEPARTMENT - Approval of Final Parcel Map 33691,
a Schedule "E" Subdivision in the French Valley Area. 3rd District; [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Improvement Agreements and Securities as approved by County Counsel; and
2. Approve the Final Parcel Map; and
3. Authorize the Chairman of the Board to sign the Improvement Agreements and Final Parcel Map for Tract Map 33691.

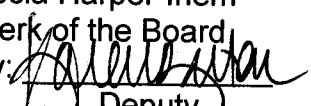
ACTION: Consent


Patricia Romo, Director of Transportation 3/29/2017

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington and Ashley
Nays: None
Absent: None
Date: April 11, 2017
xc: Transp.

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	N/A	N/A	N/A	N/A
NET COUNTY COST	N/A	N/A	N/A	N/A
SOURCE OF FUNDS: N/A. No general funds will be used.			Budget Adjustment:	N/A
			For Fiscal Year:	16/17

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

Parcel Map 33691 was approved by the Board of Supervisors on March 25, 2008 as Agenda Item 15.7. Parcel Map 33691 is an 82.07 acre subdivision that is creating 12 commercial lots and five (5) open space lots in the French Valley area. This Final Parcel Map complies in all respects with the provisions of Division 3 of Title 15 of the Government Code and applicable local ordinances. All necessary conditions of approval have been satisfied and departmental clearances have been obtained to allow for the recordation of the final map.

Government Code Section 66458 directs the Board of Supervisors to approve a final map, without any discretion, if the map conforms to all the requirements of the Subdivision Map Act and local ordinances applicable at the time of approval or conditional approval of the tentative map.

French Valley Airport Center, LLC desires to enter into Improvement Agreements to guarantee the construction of the required improvements and has submitted Improvement Agreements and Securities which have been approved by County Counsel. All costs for improvements will be the responsibility of the developer. The securities posted by The Bank of East Asia, Ltd., Los Angeles Branch are as follows:

- \$691,350 - L/C-3202SBY for the completion of street improvements
- \$541,350 - L/C-3203SBY for the completion of one year maintenance
- \$725,200 - L/C-3204SBY for the completion of street improvements
- \$11,600 - L/C-3204SBY for the completion of the water system
- \$19,200 - L/C-3204SBY for the completion of the sewer system
- \$55,814 - L/C-3204SBY for the completion of the monumentation

Impact on Residents and Businesses

N/A

Additional Fiscal Information:

N/A

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

Contract History and Price Reasonableness:

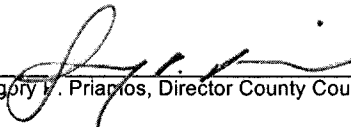
N/A

ATTACHMENTS:

PM 33691 Vicinity Map
Road/Drainage Improvement Agreement
Water System Improvement Agreement
Sewer System Improvement Agreement
Monumentation Agreement
One Year Maintenance Agreement
Road/Drainage Improvement Agreement
PM 33691 Mylars


Elena Boeva, Deputy County Counsel

3/29/2017


Gregory V. Priamos, Director County Counsel

3/29/2017

**ASSESSOR-COUNTY CLERK-RECORDER, RIVERSIDE COUNTY
RECORDS MANAGEMENT PROGRAM
RECORDS TRANSFER LIST, part 1**

1. Work Order # _____

1. Page _____ of _____

INSTRUCTIONS: Fax completed form to (909) 3586961 and submit original form to the Records Center with the records being transferred.

DEPARTMENTAL INFORMATION					
3. DEPARTMENT Clerk of the Board of Supervisors			8. ORG.#		10. DATE 04/11/2017
4. ORGANIZATION County of Riverside			9. ACCOUNT #		11. MEDIA CODE
5. ADDRESS 4080 Lemon St., Room 127			12. NO. OF BOXES TRANSFERRED		
CITY Riverside, Ca. 92501			13. RECORDS TRANSFERRED BY: Ashley Aparicio		
6. MAIL STOP 1010		7. Name PHONE # FAX# Ashley Aparicio 955-8092 951-955-1071		14. RECORDS COORDINATOR (must be Authorized):	
15. BOX # (Temp)	16. DESCRIPTION OF RECORDS Must be the same as records series title on schedule	17. RANGE OF YEARS	18. DESTRUCTION DATE	19. RECORD SERIES TITLE CODE	20. PERMANENT BOX # (Barcode label)
	Item No 2.16 Board Meeting 04/11/2017				
	Final Map for Tract 33691 Schedule E Subdivision in French Valley Area				
	Original CC&R				
21. RECORDS RECEIVED BY: <i>Jose Miranda</i>			30. REMARKS		
22. TITLE <i>RMAP</i>		23. RECEIVED VIA:			
24. DATE RECEIVED: <i>4/12/17</i>		25. TIME RECEIVED:			
26. BOXES VERIFIED BY:		27. DATE BOXES VERIFIED:			
28. NAME/DATE SCANNED TO HOLDING AREA:					
			29. NAME/DATE SCANNED TO LOCATION:		

RECEIVED RIVERSIDE COUNTY
CLERK / BOARD OF SUPERVISORS
2017 APR 12 AM 11:09

2017-4-125312

PARCEL MAP NO. 33691

BEING A SUBDIVISION OF A PORTION OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 7 SOUTH, RANGE 2 WEST, S.B.M., AND DESCRIBED IN CONDITIONAL CERTIFICATE OF COMPLIANCE NO. 4399, RECORDED APRIL 25, 1985 AS INSTRUMENT NO. 128297, ALL IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

PARCELS 2, 3, 5 AND 6 FOR COMMERCIAL CONDOMINIUM PURPOSES (69 UNITS)
DENNIS JANDA, INC.
MARCH 2015

RECORDER'S STATEMENT
FILED THIS _____ DAY OF _____, 20____, AT _____ M. IN _____ OF PARCEL MAPS, AT PAGES _____ OF THE REQUEST OF THE CLERK OF THE BOARD.
NO. _____
FEE _____

PETER ALDAMA, ASSESSOR - COUNTY CLERK - RECORDER
BY: _____ DEPUTY
SUBDIVISION GUARANTEE: FIRST AMERICAN TITLE INSURANCE COMPANY

COUNTY SURVEYOR'S STATEMENT

THIS MAP CONFORMS TO THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES. HEREBY STATE THAT THIS MAP HAS BEEN EXAMINED BY ME OR UNDER MY SUPERVISION AND FOUND TO BE SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP OF PARCEL MAP NO. 33691 AS FILED, AMENDED, AND APPROVED BY THE BOARD OF SUPERVISORS ON MARCH 25, 2008. THE EXPIRATION OF MY TERM BEING MARCH 25, 2017, AND THAT I AM SATISFIED THIS MAP IS TECHNICALLY CORRECT.

DATE: _____ 20____
RICHARD G. LANTIS, COUNTY SURVEYOR
L.S. 7811
EXPIRATION DATE: 12/31/2018

BOARD OF SUPERVISOR'S STATEMENT

THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BY ITS BOARD OF SUPERVISORS, HEREBY CERTIFIES THAT THIS MAP IS IN ACCORDANCE WITH THE SUBDIVISION MAP ACT, PUBLIC ROAD AND PUBLIC UTILITY PURPOSES, AND AS PART OF THE COUNTY MAINTAINED ROAD SYSTEM, SUBJECT TO IMPROVEMENTS IN ACCORDANCE WITH COUNTY STANDARDS. THE OFFER OF DEDICATION FOR THE STORM DRAIN EASEMENTS FOR DRAINAGE AND MAINTENANCE PURPOSES AS SHOWN HEREON, ARE HEREBY ACCEPTED INTO THE COUNTY ROAD SYSTEM, SUBJECT TO IMPROVEMENTS IN ACCORDANCE WITH COUNTY STANDARDS.

THE OFFER OF DEDICATION OF LOTS "E", "F" AND "G" FOR OPEN SPACE PURPOSES AS SHOWN HEREON IS HEREBY ACCEPTED, ON BEHALF OF PUBLIC.

THE OFFER OF DEDICATION FOR THE EASEMENT FOR PUBLIC PURPOSES, STORM DRAIN (DRAINAGE BASIN) EASEMENT LYING WITHIN LOT "F" AND PARCEL 5, FOR THE CONSTRUCTION AND MAINTENANCE OF FLOOD CONTROL FACILITIES AS SHOWN HEREON IS HEREBY ACCEPTED, SUBJECT TO IMPROVEMENTS IN ACCORDANCE WITH COUNTY STANDARDS.

THE OFFER OF DEDICATION FOR THE EASEMENT FOR PUBLIC PURPOSES, ACCESS EASEMENT LYING WITHIN LOT "E" AND PARCELS 9 AND 10, FOR INGRESS, AND EGRESS, AND FOR THE MAINTENANCE OF DRAINAGE FACILITIES AS SHOWN HEREON IS HEREBY ACCEPTED, SUBJECT TO IMPROVEMENTS IN ACCORDANCE WITH COUNTY STANDARDS.

DATE: _____ 20____
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
ATTEST:
KECIA HARPER-HEM
CLERK OF THE BOARD OF SUPERVISORS
BY: _____ DEPUTY
CHAIRMAN OF THE BOARD OF SUPERVISORS

TAX COLLECTOR'S CERTIFICATE

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE AS OF THIS DATE, THERE ARE NO LIENS AGAINST THE PROPERTY SHOWN ON THE WITHIN MAP FOR UNPAID STATE, COUNTY, MUNICIPAL OR LOCAL TAXES, OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOW A LIEN BUT NOT YET PAYABLE, WHICH ARE ESTIMATED TO BE \$ _____.

DATE: March 20, 2015
DON KENT, COUNTY TAX COLLECTOR

BY: Shelley Zelaya DEPUTY

OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF THE LAND INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS REQUIRED FOR THE RECORDING OF THIS MAP; THAT WE HAVE CONSENTED TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN ON THE TENTATIVE MAP; THAT THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES, LOTS "A" THROUGH "D" INCLUSIVE, LOT "F" AND LOTS "I" THROUGH "L" INCLUSIVE, THE DEDICATION IS FOR STREET AND PUBLIC UTILITY PURPOSES.

AS A CONDITION OF DEDICATION OF LOT "D" (LEWY ROAD), THE OWNERS OF LOTS "I" AND "K" ABUTTING THIS ROAD AND DURING SUCH TIME WILL HAVE NO RIGHTS OF ACCESS EXCEPT THE GENERAL EASEMENT OF TRAVEL. ANY CHANGE OF ALIGNMENT OR WIDTH THAT RESULTS IN THE VACATION THEREOF SHALL TERMINATE THIS CONDITION OF ACCESS RIGHTS AS TO THE PART VACATED.

WE HEREBY RETAIN LOTS "J" AND "K", INDICATED AS OPEN SPACE, AS SHOWN HEREON, FOR PRIVATE USE, FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS, ASSIGNEES, AND LOT OWNERS WITHIN THIS PARCEL MAP.

WE HEREBY RETAIN LOT "M" INDICATED AS A WATER AND SEWER EASEMENT TO EASTERN MUNICIPAL WATER DISTRICT, AS SHOWN HEREON, FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS AND ASSIGNEES, AND LOT OWNERS WITHIN THIS PARCEL MAP.

WE HEREBY RETAIN THE EASEMENTS, INDICATED AS MAINTENANCE OF LANDSCAPE, STORM DRAIN AND RETAIN THE USE OF THE STORM DRAIN EASEMENT FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS AND ASSIGNEES, AND LOT OWNERS WITHIN THIS PARCEL MAP.

WE HEREBY RETAIN THE EASEMENT INDICATED AS MULTIPLE SPECIES HABITAT CONSERVATION FOR THE SOLE BENEFIT OF OURSELVES, OUR SUCCESSORS AND ASSIGNEES, AND LOT OWNERS WITHIN THIS PARCEL MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES, THE DEDICATION IS FOR DRAINAGE AND MAINTENANCE PURPOSES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES; THE LOTS "E", "F" AND "G", AS SHOWN HEREON, THE DEDICATION IS FOR OPEN SPACE PURPOSES IN FAVOR OF RIVERSIDE COUNTY REGIONAL PARKS AND OPEN SPACE DISTRICT.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES; STORM DRAIN (DRAINAGE BASIN) EASEMENT LYING WITHIN LOT "F" AND PARCEL 5, AS SHOWN HEREON, THE DEDICATION IS FOR THE CONSTRUCTION AND MAINTENANCE OF FLOOD CONTROL FACILITIES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES; ACCESS EASEMENT LYING WITHIN LOT "F" AND PARCELS 9 AND 10, AS SHOWN HEREON, THE DEDICATION IS FOR INGRESS, AND EGRESS, AND FOR THE CONSTRUCTION AND MAINTENANCE OF DRAINAGE FACILITIES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES, TO EASTERN MUNICIPAL WATER DISTRICT (DISTRICT), A PUBLIC AGENCY OF THE STATE OF CALIFORNIA, TO MAINTAIN, ENLARGE, RECONSTRUCT, REMOVE AND REPLACE, OPERATE, INSPECT, REPAIR, IMPROVE AND RELOCATE SEWER AND WATER FACILITIES, ALL AS SHOWN ON THIS MAP WITHIN THE RIGHT OF ACCESS TO AND FROM SAID EASEMENT FOR THE PURPOSES DESCRIBED ABOVE. THE GRANTING OF SAID EASEMENT, OWNER RETAINS THE RIGHT TO USE THE EASEMENT AREA PROVIDED THAT OWNER SHALL NOT CONSTRUCT OR ERECT BUILDINGS, MASONRY WALLS, MASONRY FENCES AND OTHER STRUCTURES OR IMPROVEMENTS, OR PLANT OR BROW TREES OR SHRUBS, OF CHANGE THE SURFACE GRADE OR INSTALL PRIVATELY-OWNED PIPELINES WITHOUT THE PRIOR WRITTEN CONSENT OF DISTRICT.

FRENCH VALLEY AIRPORT CENTER LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

Joseph Poon
PRINT NAME: JOSEPH POON
TITLE: PRESIDENT

BENEFICIARY

THE BANK OF EAST ASIA LIMITED, LOS ANGELES BRANCH BENEFICIARY UNDER DEED OF TRUST RECORDED FEBRUARY 9, 2005 AS INSTRUMENT NO. 05-0112746, A DOCUMENT RECORDED OCTOBER 1, 2007 AS INSTRUMENT NO. 2007-0613186, MODIFIED OCTOBER 1, 2007 AS INSTRUMENT NO. 2007-0613187, INSTRUMENT NO. 18, 2008 AS INSTRUMENT NO. 08-131891, A DOCUMENT RECORDED JULY 24, 2008 AS INSTRUMENT NO. 08-093286, A DOCUMENT RECORDED JULY 30, 2008 AS INSTRUMENT NO. 08-418081, SUBORDINATED TO DOCUMENT RECORDED JULY 30, 2008 AS INSTRUMENT NO. 08-419056, MODIFIED APRIL 24, 2009 AS INSTRUMENT NO. 09-201937, MODIFIED JULY 21, 2010 AS INSTRUMENT NO. 2010-033983X, MODIFIED JUNE 25, 2012 AS INSTRUMENT NO. 2012-0281249, MODIFIED JUNE 20, 2013 AS INSTRUMENT NO. 2013-028401Z, MODIFIED JUNE 20, 2014 AS INSTRUMENT NO. 2014-0226791, ALL OF OFFICIAL RECORDS.

Shelley Zelaya
PRINT NAME: SHON KEEUNG (NING KWONG KEUNG)
TITLE: GENERAL MANAGER

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF FRENCH VALLEY AIRPORT CENTER LLC, A CALIFORNIA LIMITED LIABILITY COMPANY IN MAY, 2011. I HEREBY CERTIFY THAT THE CHARACTER AND OCCUPANCY OF THE POSITIONS LOCATED ON THIS MAP WILL BE SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP OF PARCEL MAP NO. 33691 AS FILED, AMENDED, AND APPROVED BY THE BOARD OF SUPERVISORS ON MARCH 25, 2008. THE EXPIRATION OF MY TERM BEING MARCH 25, 2017, AND THAT I AM SATISFIED THIS MAP IS TECHNICALLY CORRECT.

DATE: 21 FEB 2015
Shelley Zelaya
DENNIS W. JANDA, P.L.S., S.D. 6559
EXPIRATION DATE: 12/31/2016



TAX BOND CERTIFICATE

I HEREBY CERTIFY THAT A BOND IN THE SUM OF \$ 246,400.00 HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, CALIFORNIA, CONDITIONED UPON THE PAYMENT OF ALL TAXES, STATE, COUNTY, MUNICIPAL, OR LOCAL, AND ALL SPECIAL ASSESSMENTS COLLECTED AS TAXES, BUT NOT YET PAYABLE, AND SAID BOND HAS BEEN DULY APPROVED BY SAID BOARD OF SUPERVISORS.

CLERK FOR SURETY TAX BOND
COUNTY TAX COLLECTOR
BY: Shelley Zelaya DEPUTY
DATE: March 20, 2015

SIGNATURE OMISSIONS

PURSUANT TO SECTION 66438 OF THE SUBDIVISION MAP ACT, THE SIGNATURES OF THE FOLLOWING OWNERS OF EASEMENTS AND/OR OTHER INTERESTS HAVE BEEN OMITTED:
A PERPETUAL EASEMENT FOR RIGHT-OF-WAY FOR PIPELINES IN FAVOR OF THE UNITED STATES OF AMERICA, IN A FEDERAL JURISDICTION, AS SHOWN ON THIS MAP WITHIN THE COUNTY RECORDS FOR THE HIGHWAY SAID PROPERTY CENTRAL DIVISION, A CERTIFIED COPY WAS RECORDED OCTOBER 31, 1949 AS INSTRUMENT NO. 3839 IN BOOK 1128, PAGE 171, OF OFFICIAL RECORDS.

A CONTRACT AND GRANT OF EASEMENT GRANTED TO THE UNITED STATES OF AMERICA FOR PIPELINES FOR SAID BOND BARREL-SAN DIEGO AQUEDUCT RECORDED JUNE 25, 1953 AS INSTRUMENT NO. 31270 OF OFFICIAL RECORDS.

AN ASSIGNMENT OF SEWER EASEMENT AGREEMENT IN FAVOR OF FRENCH VALLEY INDUSTRIAL DEVELOPMENT, INC., RECORDED FEBRUARY 9, 2005 AS INSTRUMENT NO. 2005-0112745 OF OFFICIAL RECORDS.

A CONSERVATION EASEMENT IN FAVOR OF GOLDEN STATE LAND CONSERVANCY, RECORDED JULY 30, 2008, AS INSTRUMENT NO. 2008-041893 OF OFFICIAL RECORDS.

EASTERN MUNICIPAL WATER DISTRICT'S ACCEPTANCE STATEMENT

HEREBY STATE THAT THE EASEMENTS DEDICATED ON THIS MAP TO THE EASTERN MUNICIPAL WATER DISTRICT ARE HEREBY ACCEPTED AND THE DISTRICT CONSENTS TO THE RECORDATION THEREOF BY ITS DULY AUTHORIZED OFFICER.

Shelley Zelaya
SHELLEY ZELAYA, BOARD SECRETARY OF THE EASTERN MUNICIPAL WATER DISTRICT AND THE BOARD OF DIRECTORS THEREOF. DATE: March 20, 2015

NOTES:
SOILS REPORT - SEE SHEET 2
NOTICE OF DRAINAGE FEES - SEE SHEET 2
ENVIRONMENTAL CONSTRAINT NOTE - SEE SHEET 2

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:

JACKSON | TIDUS
Attn: Steven Dettmann, Esq.
2030 Main Street, 12th Floor
Irvine, California 92614

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
FRENCH VALLEY AIRPORT CENTER**

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FOR
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
FRENCH VALLEY AIRPORT CENTER

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EXHIBIT D	-	APPROVED SUPPLEMENTAL DECLARATION FOR ASSIGNMENT TO ASSOCIATION OF MAINTENANCE PARTY'S RIGHTS AND OBLIGATIONS
EXHIBIT E	-	ALLOCATION OF PERCENTAGE SHARE OF COMMON EXPENSES

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATION OF EASEMENTS**

FOR

FRENCH VALLEY AIRPORT CENTER

This Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for French Valley Airport Center (this "**Declaration**") is made by French Valley Airport Center, LLC, a California limited liability company ("**Declarant**"). The capitalized terms used in the Preamble are defined in Article I, below.

P R E A M B L E :

A. Declarant is the owner of real property ("**First Phase**") in the County of Riverside, State of California, described as follows:

PARCEL 6 OF PARCEL MAP NO. 33691 AS SHOWN ON A
SUBDIVISION MAP RECORDED _____, 20__ AT BOOK
_____, PAGES ___ TO ___, INCLUSIVE OF MAPS IN
THE OFFICIAL RECORDS OF THE COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA.

B. The First Phase is part of a larger master-planned commercial and light industrial development being developed by Declarant and certain of its affiliates, known as "French Valley Airport Center" (the "**Master Project**").

C. The Declarant desires that all of the Covered Property (including any portion of the Annexable Area hereafter annexed into the Covered Property upon recordation of a Supplemental Declaration) be owned, operated and maintained in accordance with this Declaration. Initially, the Covered Property will not be a "common interest development" under the Commercial and Industrial Common Development Act (California Civil Code Sections 6500, *et seq.*) unless and until the Transfer Date occurs.

D. Declarant further desires that all of the Covered Property be encumbered with the obligation to fund the operation and maintenance of all Master Common Area, and other community common costs, as further described herein.

**ARTICLE I
STATEMENT OF PURPOSE; DEFINITIONS**

1.1 **STATEMENT OF PURPOSE.** Declarant hereby declares that the Covered Property, including, without limitation, the First Phase and such other real property as may be hereafter annexed in accordance with Article XVII below, will be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes contained in this Declaration, all of which are intended to enhance the attractiveness, stability and desirability of

the Covered Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Covered Property or any portion thereof. The covenants, conditions, restrictions, rights, reservations, easements and equitable servitudes set forth in this Declaration will also (1) constitute a covenant running with the land pursuant to Section 1468 of the California Civil Code; (2) run with and burden the Covered Property and will be binding upon all Persons having or acquiring any interest in the Covered Property or any part thereof, their heirs, successors and assigns; (3) inure to the benefit of every portion of the Covered Property and any interest therein as well as the Benefited Property; (4) inure to the benefit of and be binding upon Declarant (and any assignees or successors-in-interest) and each Owner and each Owner's successors-in-interest; and (5) may be enforced by (a) Declarant, (b) Maintenance Party, (c) following the Transfer Date, the Association, or (d) subject to the provisions and limitations set forth in Article XVI hereof, any Owner. Declarant intends that the Covered Property be developed for commercial, light industrial and such other uses as are defined herein or in any Supplemental Declarations hereafter Recorded, all consistent with this Declaration and such Supplemental Declarations.

1.2 **DEFINITIONS.** When the following words and phrases are used in this Declaration, they will have the meanings given in this Article and be subject to the limits described in this Article.

1.2.1 **ANNEXABLE AREA.** Annexable Area means (a) the real property legally described in *Exhibit A* attached to this Declaration and (b) any additions thereto permitted under Article XVII below. All or any portion of the Annexable Area may be made subject to this Declaration pursuant to the provisions thereof.

1.2.2 **ANNEXED TERRITORY.** Annexed Territory shall have the meaning ascribed to that term in Section 17.1 of this Declaration.

1.2.3 **APPLICABLE LAWS.** Applicable Laws means any federal, state or local statute, rule, regulation, requirement, initiative, policy and common law applicable to the Covered Property, including without limitation the development, construction, use or operation thereof, or binding upon the Owner or any lessees or occupants of the Covered Property

1.2.4 **APPROVING AUTHORITY.** The term Approving Authority shall have the meaning ascribed to said term in Section 11.3.1 of this Declaration.

1.2.5 **ARTICLES.** Articles means the Articles of Incorporation of the Association filed with the California Secretary of State upon formation thereof, as amended or restated from time to time.

1.2.6 **ASSESSMENT.** Assessment means, generally, any Common Assessment, Capital Improvement Assessment, Compliance Assessment, Extraordinary Assessment or Reconstruction Assessment.

1.2.7 **ASSESSMENT, CAPITAL IMPROVEMENT.** Capital Improvement Assessment means a charge which the Board may levy against each Lot and the Owner thereof representing a portion of the cost to the Association for installation or construction of any capital Improvements on any of the Master Common Area; provided however that Capital Improvement

Assessments shall not be assessable for the cost of initial construction of Improvements to the Master Common Area by Declarant. Capital Improvement Assessments will be levied upon the Lots based upon the share of Common Assessments allocated to such Lot pursuant to Section 7.2 of the Declaration.

1.2.8 ASSESSMENT, COMMON. Common Assessment means a charge against each Lot and the Owner thereof to be used to satisfy Common Expenses, which is to be levied as provided herein.

1.2.9 ASSESSMENT, COMPLIANCE. Compliance Assessment means a charge against a particular Owner directly attributable to or reimbursable by that Owner equal to the cost incurred by the Association for corrective action performed pursuant to the Governing Documents, including, without limitation, a charge for monitoring and inspection costs, plus interest and other charges on such Compliance Assessments as provided for in the Governing Documents. Compliance Assessments may include any collection costs, expenses and reasonable attorneys' fees.

1.2.10 ASSESSMENT, EXTRAORDINARY. Extraordinary Assessment shall mean a charge which the Board may levy against the Owners and their Lots to fund payment of any emergency or other expenses which cannot be imposed as a Capital improvement Assessment or Reconstruction Assessment. Unless otherwise determined by the Board to be reasonable or appropriate under the circumstances, Extraordinary Assessments shall be levied in the same proportions as Common Assessments.

1.2.11 ASSESSMENT, RECONSTRUCTION. Reconstruction Assessment means a charge which the Board may levy against the Owners and their Lots representing a portion of the Association's cost to reconstruct any Improvements on the Master Common Area. Reconstruction Assessments will be levied in the same proportion as Common Assessments.

1.2.12 ASSOCIATION. The Association means French Valley Airport Center Maintenance Corporation, which Declarant shall form prior to the Transfer Date as either a California nonprofit mutual benefit corporation or a California nonprofit public benefit corporation in order that it shall satisfy the requirements of California Civil Code Section 6528 for purposes of constituting an "Association" thereunder.

1.2.13 ASSOCIATION ACCOUNTS. Association Accounts shall have the meaning ascribed to that term in Section 10.4.1 hereof.

1.2.14 BENEFICIARY. Beneficiary means a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust, and any assignee of such Mortgagee or Beneficiary, as the case may be.

1.2.15 BENEFITED PROPERTY. Benefited Property means, collectively, that portion of the real property described in *Exhibit B* attached hereto which is owned from time to time by Declarant or affiliates thereof.

1.2.16 BOARD OR BOARD OF DIRECTORS. Board or Board of Directors means the Association's Board of Directors.

1.2.17 **BUDGET.** Budget means a written budget for a future period containing reasonably itemized estimate of the Common Expenses and any prospective income pertaining to operation and maintenance of the Master Common Area and satisfaction by Maintenance Party of its other obligations under Article III hereof.

1.2.18 **BYLAWS.** Bylaws means the Bylaws of the Association as adopted by the Board initially or as amended or restated from time to time in accordance with the provisions thereof.

1.2.19 **CLOSE OF ESCROW.** Close of Escrow means the date on which a deed conveying a Lot is Recorded. The term "Close of Escrow" shall not include the Recordation of a deed between Declarant and any affiliate of Declarant or any successor to any rights of the Declarant unless the deed expressly indicates otherwise.

1.2.20 **COMMON EXPENSES.** Common Expenses means those expenses that are incurred for the common benefit of the Lots within the Covered Property (including expenses relating to satisfaction of or compliance with Development Conditions), including the actual and estimated costs (as such estimated costs may be set forth in the Budget) of the following:

(a) Maintaining, managing, operating, protecting, repairing and replacing the Master Common Area;

(b) Any commonly metered utilities or other commonly metered charges for the Master Common Area;

(c) Compensation paid to accountants, attorneys, professionals and managers for work relating to operation of the Master Common Area, satisfaction of or compliance with post-construction Development Conditions and enforcing the covenants, conditions and restriction contained herein;

(d) All utilities, landscaping, trash pickup and other services benefiting the Master Common Area;

(e) Orchestrating materials recycling programs, whether compulsory or elective, for the Covered Property;

(f) Maintaining, repairing and replacing catch basins, sewers and storm drains in the public right of way or other areas within, adjacent to or benefiting the Covered Property or for facilities, the maintenance of which is a requirement of the Development Conditions or otherwise imposed by any Governmental Authority in connection with development of the Covered Property or Annexable Area;

(g) Fire and casualty insurance, general liability insurance, workers' compensation insurance, and other insurance covering the Covered Property and the directors, officers and agents of the Maintenance Party;

(h) Operating and maintaining any groundwater monitoring or extraction wells located within, or constituting an element of, the Master Common Area or MCA Improvements, in accordance with any Development Conditions or as may be required by any other appropriate Governmental Authority;

(i) Taxes or assessments, if any (i) paid by the Maintenance Party hereunder in connection with discharging its duties, or (ii) levied or assessed against the Master Common Area or MCA Improvements;

(j) Amounts paid to discharge any lien or encumbrance levied against the Master Common Area, or portions thereof, which lien or encumbrance arises after the applicable Master Common Area is first placed into service as Master Common Area for the benefit of the Covered Properties and the Owners thereof;

(k) Funding of any Reserve Funds established in accordance with this Declaration in such reasonable amounts as Maintenance Party may determine;

(l) Expenses designated as Common Expenses in a Supplemental Declaration provided that such expenses must be directly related to satisfaction of Development Conditions or compliance with the Land Use Restrictions for the benefit of, in whole or in part, the Covered Property;

(m) Participation in a transportation management association in accordance with any transportation demand management plan or transportation mitigation plan or program as required by Governmental Authorities, and costs of performing traffic mitigation studies, or other transportation management compliance efforts as required by any Governmental Authority in connection with compliance with Applicable Laws or satisfaction of or compliance with the Development Conditions;

(n) Payments, if any, made to any subassociation formed for the management and operation of any Lot within the Covered Property, or any third party pursuant to any cost-sharing or reimbursement agreement between said party and the Maintenance Party (or, following the Transfer Date, the Association);

(o) Payments to any third party pursuant to any agreement between the Maintenance Party and that third party, or costs of otherwise performing obligations of the Maintenance Party hereunder, as authorized by this Declaration; and

(p) All other expenses incurred by the Maintenance Party for any reason whatsoever in connection with the Covered Property or services provided to the occupants of the Covered Property, for the common benefit of the Owners or occupants of the Covered Property.

Following the Transfer Date, in addition to the Common Expenses listed in the definition set forth above in this definition, the following shall supplement and constitute additional Common Expenses for purposes of the Declaration:

(q) amounts of Members' unpaid or uncollectible Common Assessments, Capital Improvement Assessments, Compliance Assessments or Reconstruction Assessments, as the case may be;

(r) premiums, costs and expenses of the Association with respect to any bonds;

(s) costs and expenses necessary for managing and administering the Association, including without limitation, compensation paid to Association's employees and contractors for work related to the discharge of the Association's obligations; and

(t) amounts necessary for any Reserve Funds established in such reasonable amounts as the Board may determine.

1.2.21 CONSERVATION AREA. Conservation Area shall refer, collectively, to (a) Lot E of Parcel Map No. 33691 or such other portion of the Master Project, or adjacent land area, as is described in that certain Donation Agreement dated as of July 22, 2015, by and between Declarant and Western Riverside County Regional Conservation Authority (or any amendment thereto), (b) that portion of Lot F of Parcel Map No. 33691 delineated in that certain Conservation Easement recorded in the official record of the Riverside County Recorder on July 30, 2008 as Instrument No. 08-416050, (c) those portions of Lots F and G of Parcel Map No. 33691 delineated in that certain Declaration of Restrictive Covenants recorded in the official record of the Riverside County Recorder on July 18, 2008 as Instrument No. 08-395796, and (d) such other or further portion of the Master Project hereafter encumbered by any conservation easement or restrictive covenant (or any comparable encumbrance) respecting mitigations or compliance with the then-applicable Multiple Species Habitat Conservation Plan.

1.2.22 COUNTY. County means the County of Riverside in the State of California, and its various departments, divisions, employees and representatives.

1.2.23 COVERED PROPERTY. Covered Property means all of the real property covered by this Declaration from time to time, including the First Phase, and each Phase of Development described in a Recorded Supplemental Declaration that annexes such additional portions of the Annexable Area or Phase of Development into the Covered Property pursuant to Article XVII below.

1.2.24 DECLARANT. Declarant means French Valley Airport Center, LLC, a California limited liability company, its successors and any Person to which it shall have assigned any rights hereunder by express written assignment. Any such assignment may include some or all of the rights of the Declarant and may be subject to such conditions or limits as the assignor may impose in its discretion. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of its assets, or who merges with Declarant, by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise.

1.2.25 DECLARATION. Declaration means this entire instrument, including the Preamble, all other provisions, and the Exhibits, as amended or restated.

1.2.26 **DEED OF TRUST.** Deed of Trust means a Mortgage as defined in this Declaration.

1.2.27 **DESIGN GUIDELINES.** Design Guidelines means the design and architectural guidelines for the French Valley Airport Center, if any, adopted by the Maintenance Party, or otherwise established, amended or modified in accordance with Section 11.3 of this Declaration. The Design Guidelines shall be deemed to include any sign program for the Master Project or sign criteria adopted by the Maintenance Party in conjunction with the implementation thereof. The Design Guidelines shall include landscaping guidelines for purposes of promoting aesthetic standards and consistency of appearance, which guidelines may include provisions for Maintenance Party's and/or Approving Authority's review and approval of landscaping design plans, plant material palettes and the preference for (a) promoting native plants and avoiding non-native invasive species, and (b) drought tolerant species to enhance water conservation.

1.2.28 **DEVELOPMENT CONDITIONS.** Conditions of development and impact mitigations including, without limitation, EIR mitigation measures, map conditions (including Conditions of Approval for Parcel Map No. 33691-R1 approved by the Board of Supervisors for the County on March 25, 2008), plot plan conditions (including Conditions of Approval for Plot Plan No. 25183 approved by the Planning Director for the County on February 25, 2008), permit conditions for grading and infrastructure, building permit conditions, Mello-Roos funding conditions and obligations, and all other conditions or covenants imposed or exacted by any Governmental Authority relating to entitlement, development and construction of the Covered Property.

1.2.29 **EXCLUSIVE USE AREA.** Exclusive Use Area means those portions of the Master Common Area over which exclusive easements or licenses are established by Declarant, Maintenance Party or the Association, as the case may be, for the benefit of one or more Owners or Members.

1.2.30 **FIRST PHASE.** First Phase means all of the real property described in Paragraph A of the Preamble of this Declaration.

1.2.31 **FISCAL YEAR.** Fiscal Year means the fiscal accounting and reporting period of the Maintenance Party.

1.2.32 **GOVERNMENTAL AUTHORITY.** Governmental Authority means any governmental department, agency or body of authority of the United States of America, the State of California, the County, any Regional Water Quality Control Board, the Regional Air Quality Management District, the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, Federal Aviation Administration, Riverside County Airport Land Use Commission and any other federal, state, local or municipal governmental entity or agency or successor thereto, including any special assessment district, landscape (or other) maintenance district or community facilities district having competent authority or jurisdiction over development, use or operation of the Covered Property. For purposes of this Declaration, any reference to requirements or actions imposed or mandated by a Governmental Authority shall also include any requirements, injunctions or other actions imposed or mandated by judicial order by any

court of law having jurisdiction over Declarant or any portion of the Covered Property or the Annexable Area.

1.2.33 **GOVERNING DOCUMENTS.** Governing Documents means this Declaration, all Supplemental Declarations, the Design Guidelines, the Project Area Guidelines and, following the Transfer Date, the Articles and Bylaws of the Association.

1.2.34 **HMMP.** HMMP means that certain Habitat Mitigation and Monitoring Plan for Impacts to RWQCB Jurisdictional Waters dated January 22, 2007 and revised April 25, 2008 (and as may be further revised, supplemented or superseded) prepared for the Master Project.

1.2.35 **IMPROVEMENT.** Improvement means any structure, fixture, improvement, affixed equipment, vegetation or appurtenance to real property including, without limitation, buildings, walkways, sprinkler pipes, catch basins, storm drains, sewer improvements, water distribution lines and systems, gas distribution lines, electric distribution lines and systems, telecommunication distribution lines and systems, cable television distribution lines and systems, street lights, BMP's, underground water detention systems, monitoring or remediation wells, roads, driveways, garages and car ports, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, irrigation systems, antennae, hedges, windbreaks, railings, plantings, planted trees and shrubs, poles, Signs, storage areas, exterior air conditioning and water-softening fixtures or equipment, transit shelters and benches, security gates, kiosks, cameras or monitoring equipment. The Design Guidelines may identify additional items that are Improvements.

1.2.36 **LAND AREA SQUARE FOOTAGE.** Land Area Square Footage means, with respect to a Lot or other Covered Property (or the whole or portion thereof) that is subject to this Declaration, the gross land area, expressed in square feet, of the Lot or applicable portion of the Covered Property without deduction for easements or rights-of-way. As to each Lot within the Covered Property, the square foot area measurement (or by converting any area identified in acres) identified on the Recorded parcel map subdividing such Lot; provided, however, if such Lot is further subdivided by recorded map, condominium plan, or subject to lot-line adjustment, the square foot area measurement identified thereon. With respect to any condominium projects (a) if subdivision is by airspace, land area for individual units shall be determined by dividing the underlying mapped parcel by the number of condominium units set forth thereon, or (b) if subdivision is by "site condominiums", the area (measured in square feet) of the applicable units together, with a proportionate share of common area or association property, shall be used such that the total land area of the underlying mapped parcel is allocated among the condominium unit owners. If land area measurements are not shown on the applicable parcel map or other Recorded instrument, as aforesaid, then the Association shall determine the Land Area Square Footage through licensed surveyor, which determination shall be final unless patently erroneous.

1.2.37 **LAND USE RESTRICTIONS.** Land Use Restrictions means all covenants, conditions and restrictions Recorded against all or any portion of the Covered Property from time to time, including, where applicable, any Declaration of Special Land Use Restrictions imposed by Declarant (or any affiliate of Declarant).

1.2.38 **LIEN NOTICE.** Lien Notice has the meaning ascribed to that term in Section 13.2.3 hereof.

1.2.39 **LOT.** Lot means any lot or parcel of land shown upon any Recorded subdivision map or Recorded parcel map of any portion of the Covered Property, with the exception of the Master Common Area. Lot will also mean a condominium as defined in Section 6542(b) of the California Civil Code if (i) the condominium is a volume of real property that is not located entirely within a building (a "site" condominium), and (ii) the Supplemental Declaration annexing the condominium to this Declaration states that the condominium will be defined as a Lot for purposes of this Declaration.

1.2.40 **MAINTENANCE PARTY.** Maintenance Party means the party responsible for performing the MCA Obligations under this Declaration. The Maintenance Party is the Declarant (or any affiliate of Declarant nominated by Declarant) unless and until the Declarant transfers the Maintenance Party's rights and obligations to the Association.

1.2.41 **MANAGER.** Manager means the Person who provides professional management for (a) the Master Common Area and who is retained to perform functions of the Maintenance Party as authorized, commanded and limited by the Governing Documents, and (b) following the Transfer Date, the Association, and the terms of the agreement between the Association and said Person.

1.2.42 **MASTER COMMON AREA.** The Master Common Area means all of the real property (a) operated and maintained by Maintenance Party, either in whole or in part, for the exclusive or non-exclusive use, enjoyment or benefit of the Covered Property, regardless of whether Maintenance Party's interests therein are established by deed, easement, lease, encroachment permit, right of entry, license or otherwise, or (b) operated or maintained by Maintenance Party, or for which the costs of operation and maintenance are funded, in whole or in part, by Maintenance Party in accordance with requirements of the Development Conditions. The Master Common Area may include, among other improvements, private roads, median strips, streets, parkways, sidewalks, bike path rights-of-way or easements, pedestrian path rights-of-way or easements, slope planting, berms, streetscape, retaining walls, intersection plazas, drainage facilities, BMP's, underground detention chambers, detention basins and swales on neighboring property provided that the maintenance thereof is allocated to Maintenance Party pursuant to this Declaration, any Supplemental Declaration, any Recorded map or any agreement which Maintenance Party enters into or assumes obligations under as authorized by this Declaration and which is required in connection with satisfaction of the Development Conditions or is otherwise for the common benefit of the Lots within the Covered Property. Master Common Area within subsequent phases, if any, shall be designated by Declarant in the Supplemental Declaration annexing such phase into the Covered Property. The Master Common Area will not be "common area" as defined in California Civil Code Section 6532 unless and until the Transfer Date occurs and the Master Common Area is conveyed to the Association. The Master Common Area will include, among other potential easements or parcels, the areas more particularly described on *Exhibit C-1* and *Exhibit C-2* attached hereto.

1.2.43 **MASTER PROJECT.** Master Project means the commercial and light industrial development being developed by Declarant and affiliates of Declarant, known as the "French Valley Airport Center."

1.2.44 **MCA IMPROVEMENTS.** Any Improvements located on or within the Master Common Area or that are maintained for the common enjoyment, use or benefit of the Covered Property or in satisfaction of Development Conditions. The MCA Improvements may include, without limitation, entry monuments, community and roadway directional signage, streets improvements, lighting, landscaping, trees, detention basins (including each porous landscaped detention area (each, a "PLD") located within Master Common Area unless responsibility therefor is delegated to a Governmental Authority or an Owner of an adjacent Lot), park improvements, bus or tram stops, underground detention chambers, BMP's, drainage devices, sewer Improvements, pedestrian or vehicle bridges and groundwater, soil gas, soil vapor or other environmental monitoring or extraction wells, which MCA Improvements may be located within or adjacent to the Master Common Area or elsewhere within the Covered Property.

1.2.45 **MEMBER.** Member means any Person holding a Membership (including Declarant), and generally references the Owners of the Covered Property as more particularly described herein, or the long-term ground lessee of a Lot as described in Section 5.7.1 hereof.

1.2.46 **MEMBERSHIP.** Membership means the property, voting and other rights and privileges of Members as provided in the Governing Documents, together with the correlative duties and obligations contained therein.

1.2.47 **MONTHLY PAYMENT.** Monthly Payment shall have the meaning ascribed to that term in Section 9.4.1 of this Declaration.

1.2.48 **MORTGAGE.** Mortgage means any Recorded mortgage or deed of trust or other conveyance of one or more Lots, or other portions of the Covered Property to secure the performance of an obligation, which will be reconveyed upon the completion of such performance.

1.2.49 **MORTGAGEE, MORTGAGOR.** Mortgagee means a Person to whom a Mortgage is made and includes the Beneficiary of a Deed of Trust. Mortgagor means a Person who mortgages his or her Lot, or other real property in the Covered Property to another (i.e., the maker of a Mortgage), and includes the Trustor of a Deed of Trust. The term "Trustor" is synonymous with the term "Mortgagor" and the term "Beneficiary" is synonymous with the term "Mortgagee."

1.2.50 **OWNER.** Owner means the Person or Persons, including Declarant, holding fee simple interest of record to any Lot. For any Covered Property that is subject to an executory contract of sale, the term "Owner" shall refer only to the seller, and shall not include the buyer. The term "Owner" shall not include Mortgagees, notwithstanding the prior commencement of any actions or procedures to foreclose upon the interest of Owner under the applicable Mortgage.

1.2.51 **OPEN SPACE LOTS.** Open Space Lots means Lots J and K of Parcel Map No. 33691.

1.2.52 **PERCENTAGE SHARE.** Percentage Share means the percentage share of Common Expenses allocated to each Lot in accordance with Section 9.2 of this Declaration. Unless otherwise specified, the allocation of Percentage Shares among existing Owners of the Covered Property shall be based on the ratio of Land Area Square Footage applicable to each Lot within the Covered Property to total Land Area Square Footage applicable to all Lots within the Covered Property at the time such allocation is determined.

1.2.53 **PERSON.** Person means a natural individual or any entity with the legal right to hold title to real property. When the word "person" is used and is not capitalized, the word only refers to natural persons.

1.2.54 **PHASE OR PHASE OF DEVELOPMENT.** Phase or Phase of Development means each of the following: (i) the First Phase, and (ii) all subsequent portions of the Annexable Area annexed to the Covered Property by a Notice of Annexation or Supplemental Declaration.

1.2.55 **PROJECT AREA GUIDELINES.** Project Area Guidelines means the rules, regulations, policies and procedures that Maintenance Party establishes, amends or restates, from time to time, pursuant to the Declaration for the day-to-day maintenance, operation and use of the Covered Property and use of the Master Common Area and the MCA Improvements.

1.2.56 **PROJECT PARKING RULES.** Project Parking Rules means the policies and procedures Maintenance Party establishes for the maintenance, operation and use of any and all parking lots, parking structures or other parking areas within the Covered Property, including without limitation, parking areas in the Master Common Area or parking by Owners or their tenants, employees, invitees and others on streets within the Master Project.

1.2.57 **RECORD, FILE, RECORDATION.** Record, File, or Recordation means, with respect to any document, the recordation or filing of such document in the Official Records of the County Recorder for the County of Riverside, State of California.

1.2.58 **RESERVE FUND.** Reserve Fund means that portion of the MCA Costs allocated (a) for the future repair and replacement of, or additions to, structural elements, mechanical equipment and other major components of MCA Improvements, and (b) amounts reasonably necessary to satisfy any deductibles or self-insured retentions under all insurance policies Maintenance Party maintains with respect to the Master Common Area or in performing its obligations under Article III hereof.

1.2.59 **RWQCB.** RWQCB means the California Regional Water Quality Control Board, San Diego Region, or such other region or successor department or agency as shall succeed to the powers, jurisdiction and authority maintained by the RWQCB with respect to the Master Project as of the date of this Declaration.

1.2.60 **SIGN.** Sign means all advertising, placards, monuments, signs, names, billboards, insignia, numerals, addresses, and descriptive words of any type affixed, inscribed, constructed, or maintained in the Covered Property or on any Improvement.

1.2.61 **SPECIAL BENEFIT AREA.** Special Benefit Area means a group of Lots that share the costs of either (i) maintaining, repairing and replacing specified Improvements, or (ii) receiving certain services or programs provided by or through the Association. The additional administrative costs of operating each Special Benefit Area shall be a part of the Common Expenses allocated to the Special Benefit Area component of Common Assessments. Special Benefit Areas may be designated by Declarant or the Board in accordance with this Supplemental Declaration (with the consent of all Owners subject thereto). Pursuant to Section 10.8, following the Transfer Date, the Board may also designate Special Benefit Areas under circumstances authorized herein or in a Supplemental Declaration complying with the requirements of Section 17.2.

1.2.62 **SUBASSOCIATION.** Subassociation means any California corporation or unincorporated association formed and established in connection with a Subordinate Declaration or with respect to any further subdivision (condominium, planned development or otherwise) of any Lot or Lots within the Covered Property. When formed, the Association shall not constitute a Subassociation, as that term is used herein.

1.2.63 **SUBORDINATE DECLARATION.** Subordinate Declaration means any other declaration or covenants, conditions and restrictions Recorded against a Lot or Lots within the Covered Property in connection with a commercial or industrial common interest development established thereon, whether in the form of a condominium, planned development, or taking any other form.

1.2.64 **SWPPP.** SWPPP shall mean the Storm Water Pollution Prevention Plan, if any, prepared and implemented with respect to the Covered Property or the Project in satisfaction of the Development Conditions or otherwise.

1.2.65 **SUPPLEMENTAL DECLARATION.** Supplemental Declaration means an instrument recorded either (i) to annex portions of the Annexable Area into the Covered Property pursuant to Article XVII hereof, (ii) to amend any previously recorded Supplemental Declaration, or (iii) to otherwise supplement this Declaration pursuant to Section 18.3.2 hereof, as such instrument is amended or restated.

1.2.66 **TRANSFER DATE.** Transfer Date means the date on which the Declarant shall, after formation of the Association, transfer, assign and delegate to the Association, and the Association accepts and assumes, all rights, duties and obligations of Maintenance Party under the Declaration.

1.2.67 **TRUE-UP PAYMENT.** True-Up Payment shall have the meaning ascribed to that term in Section 9.5.1 of this Declaration.

1.2.68 **TRUE-UP REPORT.** True-Up Report shall have the meaning ascribed to that term in Section 9.5 of this Declaration.

1.2.69 WATER QUALITY INSTRUMENTS. Water Quality Instruments shall mean, collectively, all agreements, documents and instruments with, and all permits and approvals issued by, any Governmental Authorities addressing the quality, treatment, channeling or flow of storm water run-off, water drainage, storm sewers or water channels located on or adjacent, or otherwise affecting, the Master Project, including without limitation the following: (a) Department of the Army, Corps of Engineers, Nationwide Permit Authorization dated as of March 14, 2007 (i.e., the Section 404 Permit); (b) RWQCB Action on Request for Clean Water Act Section 401 Water Quality Certification dated March 12, 2007, as modified by that certain Addendum dated June 16, 2008, as each has been partially implemented by recordation of (i) the Declaration of Restrictive Covenants executed by Declarant and recorded in the Official Record on July 18, 2008, as Instrument No. 08-395796, and (ii) the Conservation Easement from Declarant in favor of Golden State Land Conservancy, a California nonprofit corporation recorded in the Official Record on July 30, 2008, as Instrument No. 08-416050, and (c) water quality management plans approved (or to be approved from time to time) by the Riverside Flood Control District or the County of Riverside.

1.3 CID ACT NOT APPLICABLE UNTIL TRANSFER. Declarant intends that the Commercial and Industrial Common Interest Development Act (California Civil Code Section 6500, *et seq.*) not initially apply to this Declaration or the relationships between and among the Declarant, Maintenance Party and the Owners; provided, however, that from and after the Transfer Date, said Act shall apply with respect to the Declaration and the relationship between the Association and the Owners of the Covered Property (and any Subassociations having governance authority with respect thereto).

ARTICLE II USE RESTRICTIONS

The First Phase and each and all land annexed into the Covered Property hereunder shall be held, used and enjoyed subject to the following restrictions. Any portion of the Annexable Area added to the Covered Property shall be subject to the restrictions established in this Article unless the Supplemental Declaration annexing the property to the Covered Property indicates that the property being annexed is exempt from the restrictions in this Article. Subject to compliance with Section 17.2.6 hereof, Supplemental Declarations affecting portions of the First Phase or other Phases of Development may add use restrictions or replace the use restrictions contained in this Article.

2.1 PERMITTED USES. Subject to compliance with the other terms of this Declaration, the Covered Property may be used for any commercial, industrial or other uses for which they are designed and which are permitted under the Development Conditions and Applicable Law without issuance of a conditional use permit, variance or other discretionary approval. Any proposed use of Covered Property that requires the issuance by any applicable Governmental Authority of a variance, conditional use permit or other discretionary approval shall not be permitted unless (a) the proposed use otherwise complies with this Declaration and all Applicable Laws, Land Use Restrictions and Development Conditions, (b) the proposed use has been approved in writing by Maintenance Party, which consent shall not be unreasonably withheld, and (c) while Declarant holds fee title to any portion of the Annexable Area, the proposed use has been approved in writing by Declarant, which consent may be granted or

withheld in Declarant's sole and absolute discretion. Owner shall obtain the foregoing approval of Maintenance Party and Declarant (if applicable) prior to submitting any application (or related or supporting documents) for such variance, use permit or other discretionary approval to any Governmental Authority.

2.1.1 **Declarant Discretion.** Notwithstanding the foregoing, Declarant may authorize any other use which is not otherwise precluded by Applicable Law; provided, however, that (a) Declarant may not authorize any of the prohibited uses listed in Section 2.2.1 through 2.2.4, below, and (b) the use authorized by Declarant shall not be substantially incongruous with the permitted uses in this Section. Approvals and disapprovals by Declarant of uses not expressly permitted under Section 2.1, above, will be made in the sole and absolute discretion of Declarant.

2.2 **PROHIBITED USES.** Prohibited uses are those uses that (a) are not compatible with permitted uses for the Covered Property, as reasonably determined by Maintenance Party, (b) would result in a violation of this Declaration, including without limitation, violations of the environmental restrictions described in Section 6.1 below, or (c) uses that would result in a violation of the Development Conditions or Applicable Laws. The following operations and uses shall not be permitted on any Lot within the Covered Property unless specifically authorized in writing by Declarant in a recorded Supplemental Declaration:

2.2.1 **Airport or Aircraft Interference.** Any of the following operations, uses or activities that conflict with operation of the French Valley Airport to the extent such uses continue to be prohibited by the Development Conditions:

(a) Any use that would direct a steady light or flashing light of red, white, green or amber colors associated with airport operations toward an aircraft engaged in an initial straight climb following takeoff or toward an aircraft engaged in a straight final approach toward a landing at an airport;

(b) Any use that would cause sunlight to be reflected towards an aircraft engaged in an initial straight climb following takeoff or towards an aircraft engaged in a straight line final approach towards a landing at an airport;

(c) Any use that would generate smoke or water vapor or which would attract large concentrations of birds, or which may otherwise affect safe air navigation within the area;

(d) Any use that would generate electrical interference that might be detrimental to operation of an aircraft or aircraft instrumentation; or

(e) Uses that would generate concentrations of users, such as schools, auditoriums, amphitheatres, and stadiums.

2.2.2 **Undesirable Uses.** Trailer courts, slaughterhouses, animal hide tanneries, canneries, barns, stables, cemeteries, crematoriums, junk yards, scrap metal yards, waste material businesses, any "fire sale", "bankruptcy sale" or "public auction" businesses or thrift stores principally engaged in vending donated second-hand goods.

2.2.3 **Homeless Shelters.** Facilities or businesses providing short-term shelter, transitional housing, vocational training or free meal services to transients or homeless persons.

2.2.4 **Adult Entertainment.** Establishments or businesses principally engaged in the production, filming, recording, sale or distribution of photographs, films, recordings, or other electronic or digital media of nude or partially nude persons performing or simulating sexual acts; or businesses which show X-rated movies or pornographic movies or sell pornographic material to the public from the Covered Property.

2.2.5 **Dangerous Uses.** Businesses engaging in the on-site manufacture, sale, storage or distribution of inherently dangerous, hazardous or unsafe goods, such as munitions, ammunition, explosives or fireworks.

2.3 **LIGHTING.** Unless otherwise authorized or directed by the Approving Authority, all exterior lighting on any Lot shall be designed and located to reduce power consumption to its lowest practical level, to direct light rays inward to the extent practicable so as to reduce, to the extent commercially practicable, the escape of light beyond the property boundaries of the subject Lot, and to be compatible with the lighting on adjacent Lots in the Covered Property, as may be further provided in the Design Guidelines. In particular, for so long as required by the Development Conditions, all exterior nighttime lighting shall (a) use light emitting diodes, low pressure sodium vapor lighting or overhead high pressure sodium vapor lighting with shields or luminaries, (b) be hooded and directed away from neighboring properties, and (c) be directed away from the Conservation Area.

2.4 **LOADING FACILITIES.** Unless otherwise authorized by Declarant or the Approving Authority in their sole discretion, all loading and unloading shall be performed on the Lot, and not on the Master Common Area. Loading docks, areas and platforms shall be screened from view from streets and other Lots pursuant to the screening provisions set forth in Section 2.6, as may be further restricted in the Design Guidelines.

2.5 **TRASH AND STORAGE AREA.** Unless otherwise authorized by Declarant or the Approving Authority in their sole discretion, trash and storage areas shall be shielded from view by placement within buildings or by enclosure with walls or fences architecturally compatible with building design, and they shall incorporate doors compatible with the building architecture, as required by the Design Guidelines.

2.6 **SCREENING.** All mechanical equipment, whether roof-mounted, mounted or attached to exterior walls, or placed at grade on or around the exterior of a building on the Covered Property, including, but not limited to, antennae, satellite dishes, air conditioning, heating and ventilating equipment and vents, electrical transformers, backflow siphons, pull boxes, and all loading and unloading facilities shall, to the extent it is not prohibited by Applicable Law, be screened from view from any street and from other Lots in compliance with the Development Conditions and to the reasonable satisfaction of the Approving Authority. Exterior screening shall be constructed of materials compatible with the materials used on the exterior of the building, or may be accomplished by constructing a berm constructed of earthen materials and landscape. Electrical transformers shall be screened with landscaping, where not prohibited and reasonably practicable, and emergency or back-up generators shall be placed

within the structure or building that they intend to serve unless screened from view to the satisfaction of Maintenance Party, in its sole and absolute discretion.

2.7 EXTERNAL EFFECTS. Every use shall be operated so that it does not emit any obnoxious or dangerous degree of heat, glare, noise, smoke, odors, radiation or fumes beyond any boundary line of the Lot on which the use is located and so that ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point on any boundary line of the Lot on which the use is located. No materials or wastes shall be permitted on a Lot in such form or manner as to permit transfer off of a Lot by natural causes or forces and all materials or wastes which might cause fumes or dust or which might constitute a fire hazard or which might be edible by, or otherwise attractive to animals, rodents or insects shall be stored only in closed containers or within an enclosed structure. Notwithstanding the foregoing, nothing in this Section 2.7 shall be interpreted so as to unreasonably restrict or prohibit temporary impacts resulting from the conduct of reasonable and customary construction activity on any Lot within the Covered Property to the extent such construction activity otherwise complies with any construction rules and regulations reasonably imposed by Declarant or Maintenance Party.

2.8 PARKING AND VEHICULAR RESTRICTIONS. No vehicle shall be parked on any portion of the Covered Property other than within the striped parking spaces, within a building or within a storage area, except temporarily while loading or unloading at a doorway or loading area of a building Improvement on a Lot or as in hereinafter permitted by this Section. No parking shall be permitted which may obstruct free traffic flow, constitute a nuisance, or otherwise create a safety hazard. Each Lot must provide sufficient parking to satisfy County parking requirements for all uses conducted on such Lot on-site and shall not rely on parking facilities available on the Lot of any other Owner except pursuant to parking easements or other recorded agreements. Maintenance Party shall have the right to adopt, separately or as part of the Project Area Guidelines, a set of Project Parking Rules regarding parking and vehicular use within the Covered Property and on public streets within the Master Project. Declarant, in its discretion, may waive in writing all or any portion of the provisions of this Section.

2.8.1 Enforcement by Subassociation. Maintenance Party may elect to delegate the responsibility for enforcing the restrictions contained in this Section to any Subassociation under a Subordinate Declaration. If Maintenance Party notifies a Subassociation that it has delegated Maintenance Party's responsibilities, the Subassociation must enforce these restrictions as they apply to the applicable Covered Property that is subject to the Subassociation's jurisdiction, and any and all restrictions under any Subordinate Declaration shall be superseded to the extent the conflict with the requirements of the Governing Documents of the Association.

2.9 CONSERVATION AREA. No Owner shall enter upon or into, nor permit any lessee, occupant, guest, invitee or third party under the reasonable control of Owner, to enter upon or into, or otherwise adversely affect any portion of the Conservation Area including without limitation, engage in brush clearance activities within the Conservation Area. Where practicable, Covered Property adjacent to the Conservation Area shall incorporate barriers such as native landscaping, rocks, boulders, fencing, walls, signage, or other appropriate mechanisms to limit entry thereupon. Each Owner shall at all times comply with the requirements of the

HMMP and all Water Quality Instruments (and all easements, encumbrances and restrictive covenants related thereto or implementing the terms thereof) in connection with the development, use, occupancy, operation and maintenance of the Covered Property to the extent same may have an impact on the Conservation Area. Noise generating activities adjacent to the Conservation Area shall incorporate setbacks, berms or sound walls to minimize the affect of such noise on the Conservation Area. Any activities occurring on the Covered Property adjacent to the Conservation Area that incorporate the use of chemicals shall incorporate measures to ensure that use or application of those chemicals will not be discharged into the Conservation Area by overspray or otherwise.

2.10 NUISANCES. No noxious or offensive activities shall be carried on upon any part of the Covered Property, which may be, or may become, a nuisance to the Owners, or which shall in any way interfere with the quiet enjoyment of each Owner of his respective Lot, or which shall in any way increase the rate of insurance for any other Lot. Each Owner shall comply with any applicable governmental noise abatement ordinances.

2.11 FURTHER SUBDIVISION. No Owner in the Covered Property shall further subdivide its Lot unless Declarant has given its prior written approval, which may be granted or withheld in Declarant's sole and absolute discretion.

2.12 RE-ZONING OR GENERAL PLAN AMENDMENTS. No rezoning or general plan or specific plan amendments concerning any portion of the Master Project may be initiated or proposed by any Owner, unless the application, petition or other proposal therefor has been approved in writing by the Declarant, and the proposed rezoning or general plan of specific plan amendment otherwise complies with this Declaration and all Applicable Laws.

ARTICLE III MAINTENANCE PARTY'S RIGHTS AND OBLIGATIONS

Maintenance Party has the following rights, powers and duties:

3.1 MASTER COMMON AREA. Maintenance Party shall have the power and duty to operate, maintain and manage the Master Common Area and the MCA Improvements therein in accordance with the Declaration. Maintenance Party may install, repair or remove MCA Improvements or, as necessary or appropriate, reconstruct, replace or refinish any MCA Improvement.

3.2 UTILITIES. Maintenance Party shall have the power and duty to obtain all water, sewer, gas, electric services and communications services as may be necessary or appropriate, as determined by Maintenance Party, for operation and maintenance of the Master Common Area.

3.3 SEWERS, STORM WATER FACILITIES AND BMPs. Maintenance Party shall have the power and duty to inspect, maintain, repair and replace any sewer systems, storm drains or drainage facilities and BMP (Best Management Practice) facilities and improvements serving the Covered Property if and to the extent said facilities and systems serve more than one Lot and are not maintained by a Governmental Authority or a utility company. All costs and expenses incurred in connection with performing and discharging said duties shall be part of the

Common Expenses allocated among the Owners in accordance with Section 9.2 and Article X of this Declaration. Without limiting the generality of the foregoing, Maintenance Party's duties hereunder shall include the following specific responsibilities:

3.3.1 BMP FACILITIES. Maintenance Party shall inspect and maintain all treatment control BMP facilities installed as part of the MCA Improvements, located within the Master Common Area or otherwise required by the Development Conditions to be maintained, through common contributions from owners of all the Covered Property, as a condition of development and construction of the Covered Property; and

3.3.2 FLOOD CONTROL FACILITIES. From and after the Transfer Date, ~~and unless inspection and maintenance responsibilities are accepted by the County Transportation Department or the Flood Control District (or other applicable Governmental Authority),~~ the Association shall undertake and discharge all inspection and maintenance responsibilities for any flood control facilities constructed upon, or located within, the area of the Covered Property or the Master Project, including without limitation, (a) to maintain all private drainage facilities within the Covered Property, and (b) to cause said private flood control and drainage facilities to be inspected and cleaned out before October 15 of each calendar year. At all times prior to the Transfer Date, Maintenance Party shall undertake and discharge all of the foregoing flood control facility inspection and maintenance responsibilities.

3.4 GRANTING RIGHTS. With respect to any Master Common Area owned in fee simple by Maintenance Party, Maintenance Party shall have the power to grant exclusive or nonexclusive easements, licenses or rights on, over, across or under, or to grant fee interests in said owned Master Common Area, to the extent any such grant is reasonably required (a) for Improvements to serve the Master Common Area, (b) for purposes of conformity with the as-built location of Improvements installed or authorized by Maintenance Party, (c) in connection with any lawful lot line adjustment, or (d) for other purposes consistent with the intended use or development of the Master Project. This power includes the right to create and convey such interests to an Owner over portions of the Master Common Area. Maintenance Party may de-annex any portion of the Covered Property from the encumbrance of the Declaration in connection with any lawful lot line adjustment.

3.5 MITIGATION MONITORING AND REPORTING PROGRAMS. Maintenance Party shall have the power (and the duty to the extent such duty is imposed by a Governmental Authority) to coordinate and monitor any mitigation monitoring and reporting programs in satisfaction of the Development Conditions, the Water Quality Instruments, the HMMP or any requirements imposed on the Covered Property by a Governmental Authority, including, without limit, development mitigations, vehicle trip monitoring, air quality emissions monitoring programs or storm water run-off monitoring. The foregoing power shall include the right to employ mitigation monitors and consultants to prepare and issue annual status reports and to ensure implementation of development mitigation measures imposed by any Governmental Authorities (and to pay all costs associated with such programs).

3.6 RIGHT OF ENTRY FOR INSPECTION. Maintenance Party shall have the power and the duty, to the extent Maintenance Party deems advisable, to enter upon any Lot for the purpose of inspecting any portion of the Covered Property to ensure compliance with this

Declaration or to otherwise satisfy the obligations of Maintenance Party hereunder subject to the restrictions of Section 8.8. Except where exigent circumstances demand earlier access, Maintenance Party shall give advance written notice not less than forty-eight (48) hours prior to exercising any right of entry or inspection in accordance herewith.

3.7 RIGHT OF ENTRY FOR ACCESS AND FORCED COMPLIANCE.

Maintenance Party shall have the power, but without any obligation, for Maintenance Party to enter upon any Lot without being liable to any Owner except for reasonably avoidable damage caused by such entry, in order to (i) enforce the Governing Documents by peaceful means, (ii) maintain or repair any Lot if for any reason the responsible Owner fails to perform maintenance or repair required by the Governing Documents, (iii) cause the Lot to comply with the requirements of the Development Conditions, the Water Quality Instruments or the HMMP, and/or (iv) to access adjacent Covered Property, the Conservation Area or the Open Space Lots. This power shall include the ability to cause a Lot or the Improvements thereon to comply with any lawful order of a Governmental Authority. Exercise of the powers herein granted and reserved shall be exercised only (a) to the extent directed by Declarant or otherwise deemed advisable by Maintenance Party, and (b) after reasonable notice is given by Maintenance Party, except where there exist an emergency or other exigent circumstances requiring immediate entry, in which case Maintenance Party shall provide notice at the earliest practicable time thereafter.

3.8 MANAGER AND OTHER PERSONNEL. Maintenance Party shall have the power to retain a Manager and to employ other Persons necessary for the effective operation and maintenance of the Master Common Area, including legal, management and accounting services.

3.9 INSURANCE. Maintenance Party shall have the power and duty to keep insurance for the Master Common Area and MCA Improvements in accordance with this Declaration or as reasonably necessary and customary for the protection of the Master Common Area, the MCA Improvements and Maintenance Party.

3.10 BORROWINGS. Maintenance Party shall have the power to encumber, mortgage, pledge, hypothecate and/or otherwise grant security interests in the Master Common Area as collateral for borrowing money or incurring debt for purposes authorized by this Declaration or in furtherance of satisfying its obligations hereunder.

3.11 COMMUNITY-WIDE SERVICES AND IMPROVEMENTS. Maintenance Party shall have the power and the duty, to the extent directed by Declarant, required by any Governmental Authority or Development Conditions, or as Maintenance Party otherwise deems it advisable, to pay a portion of the costs of services provided to the French Valley Airport Center as a whole which benefit the Owners and occupants of the Covered Property and the power and the duty, to the extent Maintenance Party is directed by Declarant or otherwise deems it advisable, to pay for a portion of the costs of maintenance of improvements or other areas in the French Valley Airport Center or neighboring lands, whether located inside or outside of the Covered Property, which benefits the Covered Property and the Owners of the Lots therein or is otherwise reasonably required to satisfy Development Conditions, including, for purposes of example and not to limit the generality of the foregoing, costs of providing management and maintenance of Master Common Area elements such as non-public roadways, the Open Space

Lots, Conservation Area, streetscape, slope planting, retaining walls, storm drainage structures and improvements, and pest eradication and trash and recycling collection.

3.12 **CONTRACTS AND MUTUAL BENEFIT AGREEMENTS.** Maintenance Party shall have the power to enter into, modify, restate, supplement or terminate contracts and mutual benefit agreements for the common benefit of the Covered Property and the Owners thereof. This includes contracts with Owners or other Persons to provide services or to maintain Improvements in the Master Project and elsewhere that Maintenance Party is not otherwise required to provide or maintain pursuant to this Declaration. The foregoing power shall include the power to assume obligations of Declarant or of third parties under any pre-existing agreement entered into for the common benefit of the Covered Property and the Owners thereof, including but not limited to the following:

(a) ***Contracts for Services.*** Contracts with Owners or other Persons to provide services or to maintain and repair Improvements within the Covered Property;

(b) ***Contracts Satisfying Development Conditions.*** Contracts reasonably related to satisfaction of Development Conditions affecting the Covered Property; provided, however, that to the extent said contracts undertake responsibility or provide direct benefits to real property other than the Master Project, Maintenance Party shall use commercially reasonable efforts to seek reimbursement of an equitable share of the costs thereof;

(c) ***Cost Sharing.*** Contracts to share costs with any neighboring property owner, association or other third parties to contribute funds for, among other things, ongoing programs mandated by a Governmental Authority (such as habitat maintenance programs, storm water quality mitigation programs, air quality emissions programs and development mitigation monitoring programs) and for any other shared or mutually beneficial property or services or a higher level of Master Common Area maintenance;

(d) ***Adjacent Owners.*** Contracts with adjacent or neighboring property owners or other third parties to provide for preservation and maintenance of natural areas, wetlands, habitats, wildlife preserves or similar conservation areas and sponsorship of education programs and activities which contribute to the overall understanding, appreciation and preservation of the natural environment within the Covered Property and, to the extent reasonably related to satisfaction of Development Conditions, the surrounding area.

(e) ***Other Agreements.*** Agreements or contracts, including without limitation mutual benefit agreements, with any governmental or quasi-governmental agencies, landscape maintenance districts, street lighting facilities districts, nonprofit mutual benefit corporation, nonprofit public benefit corporations, unincorporated association or other entities established in connection with the operation and maintenance of the Master Project, or portion thereof, for purposes of satisfying or discharging the conditions, covenants and duties imposed by the Development Conditions, the Water Quality Instruments, the HMMP or otherwise consistent with the duties and powers set forth in the Governing Documents.

3.13 **ENFORCEMENT OF THE DECLARATION.** Maintenance Party shall have the power and duty to enforce the provisions of this Declaration, subject to the terms set forth in Article XVI below.

3.14 **PROJECT AREA GUIDELINES.** Maintenance Party shall have the power and the duty, to the extent Maintenance Party deems advisable or is directed by Declarant, to establish, amend, restate, delete and create exceptions to, or permit variances from, the Project Area Guidelines.

3.14.1 **Areas of Regulation.** Project Area Guidelines may concern, without limitation, use of the Master Common Area, signs, parking restrictions, minimum standards of property maintenance and appearance; and any other matter which concerns use and occupancy of the Covered Property; provided, however, that the Project Area Guidelines are enforceable only to the extent they are consistent with the Declaration and any Supplemental Declarations, or any of the other Governing Documents.

3.14.2 **Limits on Regulation.** Except as otherwise set forth herein or in any Supplemental Declaration, the Project Area Guidelines shall fairly apply to all Owners and their Lots. The Project Area Guidelines shall not regulate the content of political signs; however, they may regulate the time, place and manner of posting of such signs. No modification to the Project Area Guidelines may require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such modification if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to (i) subsequent Owners who take title to the Lot after the modification is adopted, or (ii) clarifications to the Project Area Guidelines.

3.14.3 **Effective Date.** All changes to the Project Area Guidelines will become effective on the earlier to occur of (a) fifteen (15) days after said changes are posted in a conspicuous place in the Master Common Area or (b) five (5) days following delivery thereof to the Owners in compliance with Section 18.6.

3.14.4 **Compliance with Project Area Guidelines.** Each Owner shall comply with, and Maintenance Party is hereby authorized and empowered to enforce, the Project Area Guidelines, provided that any such enforcement shall be accomplished in a uniform and nondiscriminatory manner.

3.14.5 **No Liability.** Maintenance Party will not be liable in damages to any Owner, or to any other Person subject to or affected by this Declaration, because of the establishment, amendment, restatement, deletion and/or waiver of any Project Area Guidelines or the enforcement or non-enforcement of the Project Area Guidelines.

**ARTICLE IV
ASSOCIATION AND TRANSFER DATE ASSIGNMENT**

From and after the date upon which Declarant forms the Association, transfers, assigns and delegates all rights, duties and obligations of Maintenance Party under the Declaration, and records the Supplemental Declaration is substantially the form attached as Exhibit D hereto, the following provisions shall apply:

4.1 **STATEMENT OF ASSOCIATION AUTHORITY.** For purposes of the requisite passage from the Development Condition set forth below, (i) the term "property owners' association" shall mean and refer to the Association from and after the formation thereof by Declarant, and (ii) the term "common area" shall mean and refer to the Master Common Area. Following the Transfer Date, and in compliance with the Development Conditions, the following shall apply with full force and effect:

"Notwithstanding any provision in this Declaration to the contrary, the following provisions shall apply:

1. The property owners' association established herein shall, manage and continuously maintain the 'common, area', more particularly described on *Exhibit C-1* and *Exhibit C-2* attached hereto, and shall not sell or transfer the 'common area' or any part thereof, absent the prior written consent of the Planning Director of the County of Riverside or the County successor-in-interest.
2. The property owners' association shall have the right to assess the owners of each individual lot or unit for the reasonable cost of maintaining such 'common area', and shall have the right to lien the property of any such owner who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien.
3. This Declaration shall not be terminated, 'substantially' amended or property deannexed therefrom absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest. A proposed amendment shall be considered 'substantial' if it affects the extent, usage or maintenance of the 'common area'.
4. In the event of any conflict between this Declaration and the Articles of Incorporation, the Bylaws, or the property owners' association Rules and Regulations, if any, this Declaration shall control."

4.2 **ASSIGNMENT OF MAINTENANCE PARTY RIGHTS TO ASSOCIATION.**

4.2.1 **Assignment and Assumption.** The Declarant may, at any time, without the consent of the Owners or Maintenance Party, cause all or any portion of Maintenance Party's rights and obligations hereunder to be assigned and delegated to the Association. Any such assignment shall exclude the Declarant's retained rights under Section (c) below, except to the extent that the Declarant expressly provides otherwise in writing. Upon Declarant's assignment

of Maintenance Party's rights and obligations to the Association, the Association shall accept the assignment and promptly counter-sign and deliver to Declarant a written assignment and assumption agreement in the form to be provided by Declarant. Such agreement shall specify the date on which such assignment and assumption becomes effective, which date of assignment shall constitute the "Transfer Date" as otherwise used herein. From and after the Transfer Date, the Association shall be solely responsible for performing Maintenance Party's duties, including operation and maintenance of the Master Common Area. Declarant and, to the extent applicable, any prior Responding Party shall be relieved of all further liability for the performance or non-performance of any such obligations arising after the Transfer Date and all references in this Master Declaration to "Maintenance Party" shall thereafter be deemed to refer to the Association. The Declarant shall deliver written notice of the assignment and the applicable Transfer Date to each of the Owners, and any Mortgagee who has requested notices pursuant to Section 15.2.

(a) **Association Incorporation.** Prior to the Transfer Date, Declarant shall incorporate or organize the Association as a California nonprofit mutual benefit corporation or an unincorporated association that satisfies the requirements of an "Association" under California Civil Code Section 6528. Upon formation of the Association and execution and delivery of the assignment described above, each Owner shall automatically become a member of the Association.

(b) **Supplemental Declaration.** In connection with Declarant's assigning and delegating Maintenance Party's rights and obligations under the Declaration to the Association, the Declarant shall have the right to Record the Transfer Date Supplemental Declaration substantially conforming to the form attached hereto as Exhibit D. Notwithstanding the foregoing, said Transfer Date Supplemental Declaration may include, among other things, (a) the Association's Bylaws; (b) Association assessment procedures, including assessment lien rights, to the extent reasonably necessary to comply with the requirements of the Commercial and Industrial Common Interest Development Act (as the same may be revised from time to time) and any regulations promulgated from time to time; (c) Owner meeting and voting procedures and (d) such other matters as are reasonably necessary and appropriate for the Association's operation of the Master Common Area, governance of the Covered Property and discharge of Maintenance Party's duties and obligations. Revisions made by Declarant to the form of Supplemental Declaration attached as Exhibit D shall not require the approval of any of the Owners or their Mortgagees as long such revisions do not (i) materially, tangibly and adversely impact any Owner's operation and use of their Covered Property, or (ii) violate the requirements of the Commercial and Industrial Common Interest Development Act.

(c) **Retained Rights.** After the Transfer Date, the Declarant shall retain any rights the Declarant has under this Declaration, including the Declarant's rights as the Owner of any Covered Property that the Declarant has annexed but not yet conveyed to another Owner; except that Declarant shall no longer have any right to appoint or direct Maintenance Party, or to or exercise the powers and rights attributed to Maintenance Party hereunder. In addition, the Declarant shall specifically retain the following rights (the "**Retained Rights**") from and after the Transfer Date:

(i) **Enforcement Rights.** The Declarant shall retain the right to enforce against Owner or any tenant or other occupant of the Covered Property, or any portion thereof, the use limitations, maintenance obligations and other provisions of this Declaration on behalf of, and in lieu of action by, the Association, subject to the terms set forth in Article XVI.

(ii) **Indemnity Rights.** The Declarant will retain all of its rights to indemnity and defense pursuant to Article XIV, or elsewhere, in this Declaration.

(iii) **Declarant's Veto Rights.** Following the Transfer Date, the Association may not take any of the following actions without the prior approval of the Declarant which may be withheld in the Declarant's sole discretion:

- (1) Any amendment of this Declaration;
- (2) Annexation of additional real property to the Declaration;
- (3) Any change in the general, overall, architectural or landscape design of the Master Project; and
- (4) Adoption of the Project Area Guidelines, and any modification or revocation of any previously adopted Project Area Guidelines.

ARTICLE V PROJECT GOVERNANCE; THE ASSOCIATION

The following terms and provisions govern the formation and operation of the Association at the time that Maintenance Party makes the Transfer Election.

5.1 **ORGANIZATION OF THE ASSOCIATION.** Declarant's general plan of development of the Covered Property includes the eventual formation of a master association of land owners with the powers of (1) owning, maintaining and administering the Master Common Area and MCA Improvements, (2) administering and enforcing the Governing Documents, and (3) collecting and disbursing assessments and charges hereinafter created. The Members of the Association are the Owners of real property interests in the Covered Property and/or other parties described in Section 5.7.3(a) hereinbelow. The Association shall exercise such powers as permitted or required by this Declaration and Section 6750 *et seq.* of the California Civil Code.

5.2 **GENERAL DUTIES AND POWERS.** The Association duties and powers are those described and limited as set forth in the Articles, Bylaws, the Declaration and any Supplemental Declarations, as well as the general and implied powers of a nonprofit public benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limits upon the exercise of such powers set forth in the Articles, Bylaws, the Declaration, and any Supplemental Declarations. All of the Association's powers shall be exercised by its Board of Directors except those powers reserved in specific provisions of the Articles, Bylaws, the Declaration or any Supplemental Declarations to the Members.

5.3 **SPECIFIC DUTIES AND POWERS.** In addition to its general powers and duties, the Association has the following specific powers and duties, which powers and duties shall be exercised for the common benefit of the Covered Property and the Owners of the Lots therein:

5.3.1 ***The Master Common Area.*** The power and duty to accept, modify, transfer, exchange, maintain, repair and otherwise manage the Master Common Area in accordance with the Governing Documents.

5.3.2 ***Sewers and Storm Drains.*** The power and duty to maintain any private sewer systems and any private storm drains or drainage facilities serving the Covered Property if ~~the drains and systems serve more than one Lot and are not maintained by a Governmental Authority or a utility company.~~

5.3.3 ***Utilities.*** The power and duty to obtain, for the benefit of the Covered Property, all commonly metered water, sewer, gas and electric services, and the power but not the duty to provide for refuse collection, recycling and communication services.

5.3.4 ***Granting Rights.*** The power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Board, to grant exclusive or nonexclusive easements, licenses, rights of way, leaseholds or fee interests in portions of the Master Common Area to the extent any such grant does not unreasonably burden any other Owner or Owners and that it is reasonably required or appropriate for the following: (i) utilities and sewer facilities to serve the Master Common Area, the Lots or other real property adjoining the Covered Property; (ii) purposes of conformity with the as-built location of Improvements installed by Declarant; (iii) lot line adjustments of Master Common Area and adjoining Lot(s); (iv) other enhancements of Lots adjacent to Master Common Area; or (v) such other purposes as the Board may determine are beneficial to the Association. The Board may deannex or annex Master Common Area, or, subject to the approval of the Owner of any such Lot and in connection with any lot line adjustment, change Master Common Area to become part of a Lot and/or change a part of a Lot to become Master Common Area in exercising its powers described in this Section 5.3.4.

5.3.5 ***Insurance.*** The power and duty to maintain liability and fire insurance for the Master Common Area and personal property, if any, owned by the Association to protect the interests of the Association and Members.

5.3.6 ***Right of Entry.*** The power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Board, to enter upon any Lot for the purpose of inspecting any portion of the Covered Property to ensure compliance with the Declaration or to otherwise satisfy the obligations of the Association hereunder. The power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Association, after Notice and Hearing, to enter upon any Lot without being liable to any Owner except for reasonably avoidable damage caused by such entry, in order to (i) enforce the Governing Documents by peaceful means, or (ii) maintain or repair any Lot if for any reason the responsible Owner fails to perform maintenance or repair required by the Governing Documents.

5.3.7 **Project Area Guidelines.** The power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Board, to establish, amend, restate, delete and create exceptions to or permit variances from the Project Area Guidelines.

(a) **Areas of Regulation.** Project Area Guidelines may concern, without limitation, use of the Master Common Area, signs, parking restrictions, minimum standards of property maintenance and appearance, and any other matter which concerns ownership, use and operation of any Covered Property by an Owner thereof; provided, however, that the Project Area Guidelines are enforceable only to the extent they are consistent with the Articles, Bylaws, the Declaration and this or any other Supplemental Declaration, and shall not be deemed to include the Design Guidelines.

(b) **Limits on Regulation.** Except as otherwise set forth herein or in any other Supplemental Declaration, the Project Area Guidelines shall fairly apply to all Owners and their Lots. The Project Area Guidelines shall not regulate the content of any political signs; however, they may regulate the time, place and manner of posting such signs.

5.3.8 **Borrowings.** The power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Board, to borrow money for purposes authorized by the Articles, Bylaws, Declaration or any Supplemental Declaration, and in aid thereof, to mortgage, pledge, deed in trust, establish a line of credit or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5.3.9 **Contracts.** The power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Board, to enter into, modify, supplement or terminate contracts for the common benefit of the Covered Property and the Owners of the Lots, including the power and, to the extent directed by Declarant, the duty to assume obligations of Declarant or of third parties under any pre-existing agreement entered into for the common benefit of the Covered Property and the Owners of the Lots, including but not limited to the following:

(a) **Services.** Contracts with Owners or other persons to provide services or to maintain and repair improvements within the Covered Property;

(b) **Cost Sharing.** Contracts to share costs with any neighboring property owner, association or other third parties to contribute funds for, among other things, ongoing programs mandated by a governmental authority (such as transportation demand programs, air quality emissions programs and development mitigation monitoring programs) and for any other shared or mutually beneficial property or services or a higher level of Master Common Area maintenance;

(c) **Other agreements.** Agreements or contracts, including without limitation mutual benefit agreements, with any nonprofit mutual benefit corporation, nonprofit public benefit corporations, unincorporated association or other entities established in connection with the operation and maintenance of the Covered Property, or portion thereof, for purposes of satisfying or discharging the conditions, covenants and duties imposed by the development

conditions or otherwise consistent with the duties and powers set forth in the governing documents.

5.3.10 *Indemnification.*

(a) *Association Representatives.* The Association has the power and the duty, to the extent the Association is directed by the Declarant or otherwise deemed advisable by the Board, to indemnify members of the Board, the Association officers, committee members, and other parties acting in any capacity on behalf of the Association, for all damages and to pay all expenses incurred by, and satisfy any judgment or fine levied against, any Person as a result of any action or threatened action against such Person brought because of performance of acts or due to any omission to act, where such Person in good faith believed to be within the scope of their Association duties and authorizations ("*Official Acts*") to the fullest extent permitted by California law. Board members, and the Association officers and committee members are deemed to be agents of the Association when performing official acts for purposes of this Section. The entitlement to indemnification hereunder inures to the benefit of the successors, estate, executor, administrator, heir, legatees or devisees of any Person entitled to such indemnification.

(b) *For other Agents of the Association.* The Association has the power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Board, to indemnify any other person acting as an agent of the Association for any damages and pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such person because of an Official Act, as authorized by California law.

(c) *Provided by Contract.* The Association also has the power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Board, to Contract with any person to provide indemnification beyond the scope of the indemnification authorized by applicable law on such terms and conditions as the Board may impose.

5.3.11 *Annexing Additional Property.* The power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Board, to annex additional property to the property encumbered by this Declaration pursuant to Article XVII.

5.3.12 *Vehicle Restrictions.* The power and duty, to the extent directed by Declarant or otherwise deemed advisable by the Board, to modify the restrictions on vehicles and the power to secure information on vehicles in the Covered Property from the California Department of Motor Vehicles.

5.3.13 *Transportation Mitigation Obligations.* The power (and the duty, to the extent such duty is either imposed by a Governmental Authority or required by direction of the Declarant) to participate, and to require Owners and their tenants and occupants to participate, in transportation management associations or to implement and satisfy transit-related mitigation obligations.

5.3.14 **Mitigation Monitoring and Reporting Programs.** The power (and the duty to the extent such duty is imposed by a Governmental Authority or is directed by Declarant) to coordinate and monitor any mitigation monitoring and reporting programs in satisfaction of any requirements imposed on the Covered Property by a Governmental Authority, including, without limit, development mitigation and air quality emissions monitoring programs, and the power to employ mitigation monitors to issue annual status reports and to ensure implementation of development mitigation measures imposed by Local Governmental Agencies and to pay all reasonable costs associated with such programs.

5.3.15 **Community Wide Services and Improvements.** The power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Board, to pay a portion of the costs of services provided to the Covered Property as a whole which benefit the Owners, tenants or other occupants of the Covered Property and the power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Association, to pay for a portion of the costs of maintenance of improvements or other areas in the Covered Property, or neighboring lands, which benefits the Covered Property and the Owners of the Lots therein, including, for purposes of example and not by way of limit, costs of providing the following: the management and maintenance of Master Common Area, such as roadways; pest eradication and trash and recycling collection; and telecommunication services.

5.3.16 **Other.** The power and the duty, to the extent the Association is directed by Declarant or otherwise deemed advisable by the Board, to perform in accordance with any mutual benefit agreement, cost sharing agreement or any other agreement entered into between the Association, any subassociation formed for the management and operation of any Lot within the Covered Property, any Governmental Authority, any nonprofit entity, or any third party that benefits the Covered Property or the Owners of the Lots or is otherwise reasonably required to satisfy the Development Conditions.

5.4 **PERMITTED FUNCTIONS.** The Association is formed exclusively for those purposes and activities which are specifically and directly related to (i) the duties and powers enumerated in this Article, (ii) maintaining, operating and using the Master Common Area, including the Improvements thereon, (iii) collecting assessments to finance the maintenance and use of the Master Common Area, and (iv) administering and enforcing the Governing Documents (collectively, the "Permitted Functions"). Permitted Functions do not include those activities prohibited by Section 5.5 below. The funds and resources of the Association shall be used exclusively for the direct costs of Permitted Functions. This Section does not preclude the use of the Master Common Area facilities by Declarant for promotional special events and other purposes as authorized by the Governing Documents.

5.5 **PROHIBITED ACTIVITIES.** The Association is prohibited from undertaking or performing any of the following activities ("**Prohibited Activities**"), or expending or using the Association funds or resources for any Prohibited Activities.

5.5.1 **Off-Site Nuisances.** Abating any annoyance or nuisance emanating from outside the physical boundaries of the Covered Property.

5.5.2 ***Abridging Rights.*** Taking any action which is inconsistent with, or which would abrogate, any right or exemption of Declarant or any Owner otherwise provided for in the Governing Documents without the express written consent of Declarant or any affected Owner.

5.5.3 ***Political Activities.*** Engaging in any Federal, State or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Covered Property. These activities include endorsement or support of legislative or administrative actions by a local Governmental Authority, candidates for elected or appointed office, initiatives, recall elections or other ballot proposals. The Association is prohibited from conducting, sponsoring, participating in or expending funds or resources on any activity, campaign or event, including any social or political campaign, event or activity, which does not directly and exclusively pertain to a Permitted Function. The foregoing is not intended to prohibit discussion of political and legislative issues by members of the Association.

5.6 STANDARD OF CARE, NONLIABILITY.

5.6.1 *Scope of Powers and Standard of Care.*

(a) ***General Scope of Powers.*** Rights and powers conferred on the Board or any committees or representatives of the Association by the Governing Documents are not duties, obligations or disabilities charged upon those persons unless the rights and powers are explicitly identified as including duties, obligations or disabilities in the Governing Documents or in Applicable Law. Unless a duty to act is imposed on the Board any committees or representatives of the Association by the Governing Documents or Applicable Law, the Board, and the committees have the right to decide to act or not act. Any decision to not act is not a waiver of the right to act in the future. Moreover, if it is determined that an action or decision does not meet the standards set forth in subsections (b) or (c) below, as applicable, provided that such action or decision is shown to be not willful or not malicious, the action or decision may be reversed without further liability to the party making the decision or taking such action.

(b) ***Business Affairs.*** This Section applies to actions by the Board and its members in connection with management, personnel, maintenance and operations, insurance, contracts and finances, and committee member actions. Each Board member shall perform the duties of a Board member in good faith, in a manner such Board member believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. When performing his duties, a Board member is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the Association whom the Board member believes to be reliable and competent in the matters presented;

(ii) counsel, engineers, architects, independent accountants or other persons as to matters which the Board member believes to be within such person's professional or expert competence; or

(iii) a committee of the Board upon which the Board member does not serve, as to matters within its designated authority, which committee the director believes to merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

This subsection (b) is intended to be a restatement of the Business Judgment Rule established in Applicable Law as it applies to the Association. All amendments, modifications, restatements and interpretations of the business judgment rule applicable to the Association shall be interpreted to amend, modify, restate or interpret this subsection (b).

~~(c) *The Association Governance.* This subsection (c) applies to Board actions and committee decisions in connection with interpretation and enforcement of the Governing Documents, architectural and landscaping control, regulation of uses within the Covered Property, rulemaking and oversight of committees. Actions taken or decisions made in connection with these matters shall be reasonable, fair and nondiscriminatory.~~

5.6.2 *Nonliability.*

(a) *General Rule.* No person is liable to any other person (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such person's official acts, except to the extent that injuries or damage result from the person's willful or malicious misconduct. No person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such person's official acts, except to the extent that such injuries or damage result from such person's willful or malicious misconduct. The Association is not liable for damage to property in the Covered Property unless caused by the negligence of the Association, the Board, the Association's officers, the project manager or its staff.

(b) *Nonliability of Volunteer Board Members and Officers.* A volunteer Board member or volunteer Association officer shall not be personally liable to any person who suffers injury, including without limit bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all of the following conditions are met:

(i) the act or omission was performed within the scope of the officer's or director's good faith understanding of such officer's duties;

(ii) the act or omission was performed in good faith;

(iii) the act or omission was not willful, wanton or grossly negligent; and

(iv) the association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance that shall include coverage for both the general liability of the association, and the individual liability of officers and directors of the association for negligent acts or omissions in that capacity with minimum coverage amounts of at least at least one million dollars (\$1,000,000) (in 2016 dollars,

indexed to inflation in accordance with the consumer price index for all urban consumers, as reasonable calculated each five years by the Board from time to time).

5.7 MEMBERSHIP AND VOTING RIGHTS.

5.7.1 *Membership Appurtenant.* Every Owner of a Lot (except for Declarant), upon Close of Escrow for its acquisition of the Lot, shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases, at which time its membership in the Association shall automatically cease; except that a lessee under a ground lease of a Lot or portion thereof with an initial term equal to or exceeding ten (10) years shall be the Member with respect to said Lot for the duration of the term of such ground lease. Declarant shall automatically acquire a membership in the Association for each Lot owned by Declarant when the Lot is encumbered by the Declaration. Declarant shall retain the membership for each Lot until such time as Declarant's ownership of the Lot ceases. Memberships in the Association shall not be assignable, except to the Person to which title to the Lot has been transferred. Every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot. Ownership of a Lot shall be the sole qualification for membership in the Association.

5.7.2 *Transfer.* The Association Membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale, ground leasing or encumbrance of such Owner's Lot, and then only to the purchaser, ground lessor or Mortgagee of such Lot. Any attempt to make a prohibited transfer shall be void, and will not be reflected upon the books and records of the Association. A Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his Membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. The contract seller shall be liable for all charges and assessments which are assessed against his Lot up to the date on which fee title to the Lot is transferred. If the Owner of any Lot should fail or refuse to transfer the Membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer has been presented to the Board, the purchaser shall not be entitled to vote at meetings of the Association. The Association may levy a reasonable transfer fee against a new Owner and his Lot (which fee may be added to the Common Assessment chargeable to such new Owner or collected through escrow) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the records of the Association.

5.7.3 *Classes of Voting Membership.* The Association shall have three (3) classes of voting Membership, as follows:

(a) *CLASS A.* Class A Members shall be all Owners with the exception of Declarant. The lessee of a lot under a ground lease with an initial term of more than ten (10) years, and not the Owner of the lot, shall be a Member during the term of such ground lease. When more than one person holds an interest in any lot, all such persons shall be Members. Class A Members are entitled to exercise Class A voting power in the Association in proportion to the Percentage Share allocated to such Owner's Lot. If a Lot is further subdivided

in accordance with the Declaration, or if additional property is annexed to the Covered Property in accordance with the Declaration, then the voting power allocated to the Lots shall be reallocated by Declarant or the Board in a Supplemental Declaration. Each Class A Member's right to vote commences on close of escrow for the Member's acquisition of the Lot to which such voting rights are appurtenant.

(b) *CLASS B.* Declarant shall be the sole Class B Member and any Lots owned by Declarant shall be entitled to five (5) times the Class A voting power that such Lots would otherwise have been allocated if the Lots were owned by a party other than Declarant. The Class B Member's right to vote as to any particular Lot commences when the Lot is annexed into the Covered Property.

(c) *CLASS C.* The Class C Member shall be Declarant. The Class C Membership shall not be considered a part of the voting power of the Association. The Class C Member is entitled to select a majority of the Members of the Board of Directors until the earlier of the date that (a) Declarant is no longer the Owner of a Lot in the Covered Property or any portion of the Annexable Area, (b) January 1, 2025, or (c) Declarant voluntarily and expressly relinquishes its rights to Class C Membership.

5.8 VOTE DISTRIBUTION. All voting rights shall be subject to the restrictions and limits established in the Declaration, any Supplemental Declarations thereto and in the Articles and Bylaws. When more than one Person holds an interest or interests in any Lot ("co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the votes to which the Lot is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A votes for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if such designation has been revoked, the votes for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No votes shall be cast for any Lot where the co-owners present in person or by proxy owning the majority interests in such Lot cannot agree to said votes or other action. The nonvoting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

ARTICLE VI DECLARANT RIGHTS AND EXEMPTIONS

6.1 INTEREST OF DECLARANT. The First Phase is a portion of a larger parcel of land which Declarant intends to develop into a master-planned commercial development. Declarant in cooperation with the County, has created a comprehensive plan for the development of the Covered Property which includes modern planning objectives which have been formulated for the common good within the Covered Property. Declarant or its successors or assigns intends, but is not obligated, to develop all of the Lots in the Annexable Area. Sale, resale, rental

and other disposal development and occupancy of Lots is essential to the establishment and welfare of the Covered Property as a quality master-planned development. Each Owner of a Lot which is part of the Covered Property acknowledges that Declarant has a substantial interest in assuring compliance with, and enforcement of, the covenants, conditions, restrictions and reservations contained in this Declaration and any Supplemental Declarations. The provisions of this Section 6.1 supersede and control over all other provisions of the Governing Documents as applied to Declarant.

6.2 SPECIAL DECLARANT RIGHTS. Declarant has the rights described in the subsections below. Nothing herein limits, and neither any Owner nor the Association may interfere with, Declarant's exercise of these rights; provided, however, that nothing in this Article or Section shall permit Declarant to do any of the following on or within the Lot of any Owner unless (a) such Owner has granted written approval therefor, or (b) Declarant holds appropriate easement or other rights (reserved in Article XII below or otherwise) with respect to such Lot.

6.2.1 Subdivision. To subdivide, resubdivide or re-entitle any portion of the Covered Property.

6.2.2 Sales. To sell, resell, rent or sublease any portion of the Covered Property directly or through agents and representatives.

6.2.3 Development. To complete excavation, grading, construction of Improvements or other development activities to and on any portion of the Covered Property.

6.2.4 Construction. To alter construction plans and designs to modify Improvements or to construct such additional Improvements as Declarant deems advisable in the course of developing the Covered Property.

6.2.5 Grading. To carry on such grading work may be approved by the Governmental Authority having jurisdiction.

6.2.6 Signs. To erect, construct and maintain on the Covered Property, such structures, signs and displays reasonably necessary for the conduct of the business of completing the work and disposing of the Covered Property and the Annexable Area by sale, lease or otherwise.

6.2.7 Creating Additional Easements. At any time prior to acquisition of title to a Lot by a purchaser from Declarant, to establish on that Lot, additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as reasonably necessary to the proper development and disposal of the Covered Property and the Annexable Area.

6.2.8 Sales and Leasing. To use any and all portions of the Master Common Area for access to the sales and leasing facilities of Declarant by prospective purchasers, sales agents and Declarant.

6.2.9 **Sales and Leasing Offices.** To use any structures or vehicles in the Covered Property as real estate sales or leasing offices.

6.2.10 **Modifications.** To unilaterally modify Declarant's development plan for the Covered Property, the Annexable Area, or any portion thereof, including without limit, recording Supplemental Declarations for portions of the Covered Property owned by Declarant and designating and redesignating Phases of Development.

6.2.11 **Restricted Access Areas.** To create areas (such as Exclusive Use Areas) in the Covered Property that are gated or that are otherwise controlled or fenced so that access to those areas are limited, provided that the owners of all Lots within such area approve the creation of such a limited access area.

6.2.12 **Election Against Annexation.** To elect not to annex portions of the Annexable Area into this Declaration, and to permit alternative development or use of said land for improvements or uses not contemplated by, or permitted under, this Declaration.

6.2.13 **Decisions by Declarant.** All decisions to be made by Declarant under this Declaration may be made by Declarant in its sole and absolute discretion unless otherwise expressly stated herein.

6.3 **EASEMENT RELOCATION.** Declarant may cause easements constituting portions of the Master Common Area to be relocated, modified or terminated to accommodate modifications to the plans for development of any future Phase in which the easement was originally located. Such relocation, modification or termination may be set forth in the Recorded instrument annexing such future Phase into the Covered Property or by a separate instrument. No such relocation, modification or termination shall prevent access to any Lot.

6.4 **EXEMPTION.** Declarant is exempt from the restrictions contained in Article II (Use Restrictions) and Article XI (Design Controls) of this Declaration.

6.5 **ASSIGNMENT OF RIGHTS.** All or any portion of the rights of Declarant hereunder and elsewhere in the Governing Documents may be assigned by Declarant, and without the consent of any Owner or the Association, by an express written assignment which specifies the rights of Declarant so assigned. Without limiting the generality of the foregoing, Declarant shall have the right to assign all or any portion of its rights hereunder at any time to (i) the Association, but only following the Transfer Date, (ii) any other Owner of any portion of the Covered Property, or (iii) any successor in interest to Declarant or to any portion of Declarant's interest in any portion of the Covered Property or the Annexable Area.

6.6 **TERMINATION OF DECLARANT RIGHTS.** Following the Transfer Date, Declarant shall have the right, by written notice to the Association, (a) to terminate any portion of its rights hereunder at any time, (b) to resign all rights of Declarant hereunder, or (c) to assign, release or relinquish any such rights to the Association, after which such rights may be exercised by the Board on behalf of the Association. Unless earlier terminated, all rights reserved to the Declarant in this Declaration shall terminate on the date that is the tenth (10th) anniversary of the annexation of the last portion of the Annexable Area to be annexed into the Covered Property.

ARTICLE VII MAINTENANCE OBLIGATIONS

7.1 **MAINTENANCE OBLIGATIONS OF OWNERS.** Each Owner, at its sole cost and expense, subject to the provisions of this Declaration requiring any architectural approvals, shall maintain, repair, replace and restore all Improvements located on its Lot (or any Exclusive Use Area appurtenant thereto) and the Lot or Exclusive Use Area itself in a neat, sanitary and attractive condition. Such maintenance responsibilities include, but are not limited to (a) maintaining of all planters and landscaped areas in a reasonably dust, weed and debris free and sanitary condition, and (b) maintaining of all parking, walkway and driveway areas, in a reasonably smooth, safe, and well lighted condition, with all ground striping, symbols and directional paint in a finished and attractive condition, and (c) maintaining clean building exteriors which shall include, if necessary, periodic painting or other treatment, and (c) as to the entirety of the Lot, in a condition and manner that is otherwise reasonably acceptable to Declarant and the Approving Authority, if any. Without limiting the foregoing, Maintenance Party shall have the right to adopt, as part of the Project Area Guidelines, maintenance standards for the Covered Property or any portion thereof and shall further have the right to set forth specific Owner maintenance standards and obligations in a Supplemental Declaration recorded against any portion of the Covered Property described therein. Such Supplemental Declarations may further assign maintenance obligations for specified Master Common Area or MCA Improvements to the Owner of any Covered Property described therein. If any Owner shall permit any portion of the Covered Property or Improvement for which it has responsibility for maintenance to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate this Declaration, Maintenance Party shall have the right to seek any remedies at law or in equity which it may have to enforce compliance herewith. In addition, Maintenance Party shall have the right, but not the duty, to enter upon such Covered Property or Improvement to make such repairs or to perform such maintenance in Owner's stead, and to obtain reimbursement for the cost thereof from said Owner.

7.2 MASTER COMMON AREA

7.2.1 **Master Common Area Maintenance.** Maintenance Party shall have the sole right and duty to maintain the Master Common Area, and the MCA Improvements, facilities and amenities thereon, in a matter satisfactory to Declarant, in its sole and absolute discretion; provided, however, that Maintenance Party may assign the maintenance obligations therefor to any Owner under a Supplemental Declaration. Maintenance Party shall, when warranted, provide for the maintenance, repair and replacement of all MCA Improvements within the Master Common Area and shall likewise provide for the utilities serving the Master Common Area. Maintenance Party shall not be responsible for the maintenance of any portions of the Master Common Area which have been dedicated to and accepted for maintenance by a Governmental Authority. All of the foregoing obligations of Maintenance Party shall be discharged when and in such manner as Declarant shall determine in its sole judgment to be appropriate.

7.2.2 **Commencement of the Maintenance Party Maintenance Obligations.** Maintenance Party's obligation to maintain any portion of the Master Common Area or any

element of the MCA Improvements shall commence, as to such portion or element, when the following requirements are met:

- (a) the Master Common Area is encumbered by the Declaration; and
- (b) the MCA Improvements or other improvement or development of the Master Common Area, if any, are substantially completed with respect to that portion thereof.

7.2.3 Alterations to the Master Common Area by Owners. Subject to the provisions of Article XI of this Declaration, no improvement, excavation or work which in any way alters the Master Common Area shall be made or done by any Person other than the Declarant or Maintenance Party (or their authorized agents) after the completion of the construction or installation of the MCA Improvements thereon.

7.3 WATER DISCHARGE AND STORM WATER RUNOFF. The Covered Property is subject to compliance with all Federal, State and local permit conditions, restriction and requirements for water discharge and storm water runoff. The following specific requirements are applicable to the Covered Property, Maintenance Party and all Owners in the Covered Property:

7.3.1 Water Quality, Section 404 Permit and NPDES. Each Owner and the Maintenance Party (to the extent of Maintenance Party's rights to the Master Common Area) shall comply with, and shall cause the Covered Property to comply with, (a) the special conditions set forth under the terms of the Section 404 issued by the United States Army Corps Of Engineers (the "*ACOE*"), (b) the other Water Quality Instruments, (c) any and all Federal, State and local requirements of the National Pollutant Discharge Elimination System ("*NPDES*") permits, whether general or individual (each, a "*NPDES Permit*"), issued or adopted pursuant to the Federal Clean Water Act. Maintenance Party and each Owner shall implement and comply with all BMPs and perform all maintenance and operations duties imposed by the Section 404 permit and Water Quality Instruments, as amended, and shall ensure that landscape irrigation systems serving the Master Common Area and Covered Property, respectively, are implemented in accordance with the BMPs, including without limitation (a) the provision for compliance with the HMMP, (b) the use of planting material and palettes described in the Design Guidelines (including, where applicable, planting material that promotes surface filtration), and (c) maintenance of all permanent slopes with required landscaping with native or other drought tolerant planting materials. The costs all such data collection and reporting requirements incurred by Maintenance Party, as well as the maintenance costs and BMP implementation costs within the Master Common Area, shall be treated as Common Expenses.

7.3.2 CWA Section 401 Water Quality Certification. The Master Project is covered by a single water quality certification, as amended, issued by the RWQCB ("*Certification*") under Section 401 of the Clean Water Act. Each Owner is responsible for ensuring that its Covered Property complies with the Certification, and shall indemnify and defend Maintenance Party for any liability arising out of any violations or failures of condition occurring on, or emanating from, such Owner's Covered Property. To the extent required by the Certification (a) Owner and Maintenance Party shall, with respect to any PLDs located on the

Covered Property or within the Master Common Area, respectively, properly operate, maintain and repair all PLDs in accordance with the requirements of the Certification, (b) each Owner shall, upon request of Maintenance Party, periodically test water discharged from the Covered Property and report the test results to Maintenance Party, and (b) Maintenance Party shall compile all test results and submit them to RWQCB or other appropriate agency. Maintenance Party is responsible for complying with the Certification as it applies to all Master Common Area. Maintenance Party may adopt guidelines that delineate the Owners' obligations in connection with the Certification and provide for adequate enforcement mechanisms to ensure Owner's compliance therewith.

7.3.3 **SWPPP Compliance.** Owners and Maintenance Party (to the extent of Maintenance Party's rights to the Master Common Area) shall comply with, and shall cause the Covered Property (and each tenant, license or occupant thereof) to comply with all consolidated or individual SWPPPs, if any, respecting storm water run-off from the Covered Property.

7.4 **DAMAGE AND DESTRUCTION.**

7.4.1 **Master Common Area.**

(a) **Owners' Responsibilities.** Each Owner is liable to Maintenance Party for any damage suffered to the Master Common Area due to the negligence or willful misconduct of said Owner or the Persons deriving their right and easement of use and enjoyment of the Master Common Area from said Owner to the extent that such damage is not fully reimbursed to Maintenance Party by insurance proceeds (including, without limitation, any deductible amounts under any insurance policies against which Maintenance Party files a claim for such damage). Maintenance Party may (i) determine whether any claim shall be made upon the insurance maintained by or available to Maintenance Party and (ii) demand and receive reimbursement from said Owner a charge equal to any deductible paid and the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner or the Persons for whom such Owner may be liable as described in this Declaration. If a Lot is jointly owned or ground leased, the liability of its Owners and ground lessees (if any) is joint and several, except to the extent that Maintenance Party has previously contracted in writing with such joint Owners or ground lessee to the contrary. The responsible Owner and ground lessee (as the case may be) shall reimburse Maintenance Party for all cost of correcting such damage to the extent not reimbursed by the proceeds of any insurance claims.

(b) **Repair And Reconstruction.** If the Master Common Area is damaged or destroyed, Maintenance Party shall cause the Master Common Area to be repaired and reconstructed, but only to the extent that the cost of repair does not exceed the total amount of Available Restoration Funds. For purposes of this Section, the term "**Available Restoration Funds**" shall mean and refer to the sum of (i) all insurance proceeds Maintenance Party actually collects from all applicable policies and coverages available in connection with the casualty event, (ii) all deductibles required under insurance maintained by Maintenance Party to the extent that payment thereof constitutes a Common Expense, and (iii) to the extent that any Owner or third party is determined to be legally responsible for the suffered casualty or loss, the amount recovered from such Owner or third party.

(c) **Discretionary Restoration.** Notwithstanding that the cost for repair and reconstruction may exceed Available Restoration Funds, Maintenance Party may elect, without obligation, to restore any damaged portion of the Master Common Area. Maintenance Party may thereafter include all costs of such repair in excess of the Available Restoration Funds as a Common Expense charge.

(d) **Eminent Domain.** If all or any portion of the Master Common Area is taken by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall belong solely to Maintenance Party. No Owner (including any Owner having rights to an Exclusive Use Area that is subject to such taking) may participate as a party, or otherwise, in any proceedings relating to such condemnation.

7.4.2 **Damage To Lots and Buildings.** If all or any portion of any Lot or any building constructed thereon ("**Building**") is damaged or destroyed by fire or other casualty, the Owner of such Lot may elect to rebuild, repair or reconstruct the Lot and the Building in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by Declarant or the Approving Authority, as provided elsewhere in this Declaration. The Owner of any damaged Lot or Building shall be obligated to proceed with all due diligence hereunder, and, should rebuilding or restoration be elected by the Owner, such Owner shall cause reconstruction to commence within six (6) months after the damage occurs and to be completed within eighteen (18) months following commencement of such reconstruction, unless prevented by causes beyond the reasonable control of such Owner. A transferee of title to the Lot which is damaged or upon which is located a damaged Building shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot; provided, however, that in no event shall such transferee be required to commence or complete such reconstruction in less than ninety (90) days from the date such transferee acquired title to the Lot. Alternatively, the Owner may elect not to reconstruct any original or replacement Improvements, in which event the Owner shall be required to immediately clear the Lot of debris and shall thereafter maintain the Lot in a safe and attractive condition and otherwise in accordance with the Design Guidelines, maintenance guidelines (if any) and any other applicable Project Area Guidelines relating thereto.

ARTICLE VIII ENVIRONMENTAL PROVISIONS

8.1 **ENVIRONMENTAL RESTRICTIONS.** It has been determined by certain Governmental Authorities that development of the Master Project impacts or may potential impact upon certain on-site and adjacent watercourses that are deemed waters of the United States as well as historic storm water conveyance channels, with respect to which the ACOE and the RWQCB have asserted jurisdiction. The Water Quality Instruments and the Development Conditions required improvement, modification, installation and/or construction of certain slopes, channels, structures and landscaping for purposes of implementing storm water run-off restrictions and mitigations described in the HMMP. For the purposes of complying with the Development Conditions, Water Quality Instruments and HMMP, the following disclosures are hereby made to all prospective purchasers, tenants or other users of the Covered Property, and

the following covenants and restrictions shall be imposed on all Covered Property and all Owners, tenants, occupants or users thereof:

8.1.1 Prohibition on Disturbance of Drainage Improvements. No Owner, tenant, occupant or user of any portion of the Covered Property shall cause or permit any use, maintenance, construction or repair work to occur within the Covered Property which could (a) interfere with or impact the established storm water drainage from any Lot or Improvement within the Covered Property or other portions of the Master Project without the express written approval of Maintenance Party and all applicable Governmental Authorities, or (b) detrimentally affect the water quality of any storm water run-off or other surface water flows entering, directly or indirectly, into the Conservation Area or onto the Open Space Lots or Master Common Area.

8.2 ENVIRONMENTAL COVENANTS AND INDEMNITY. No Owner, tenant, occupant or user of any portion of the Covered Property (nor their employees, contractors, subcontractors, invitees or guests) shall engage, or permit others to engage, in any conduct or activities on Owner's Covered Property that constitute a violation of the Environmental Covenants (to the extent the Environmental Covenants apply to such party's use of its Covered Property).

8.2.1 No Storage or Release of Hazardous Materials. No Owner, tenant, occupant or user of any portion of the Covered Property shall cause or permit any Hazardous Materials (as defined below) to be brought upon, stored, manufactured, generated, blended, handled, recycled, treated, released, disposed or used in, on, under or about the Covered Property, Master Common Area or any other portion of the Master Project, except for routine office and janitorial supplies, in usual and customary quantities, and stored, used and disposed of in accordance with all Environmental Laws (as defined below), Development Conditions or Environmental Covenants.

8.2.2 Indemnity Obligation. Each Owner, tenant, occupant or user of any portion of the Covered Property shall indemnify, protect, defend and hold harmless each other Owner, Declarant and Maintenance Party, and each of their respective successors and assigns (including, without limitation, the Association following the Transfer Date) from and against any and all claims, judgments, causes of action, damages, penalties, fines, taxes, costs, liabilities, losses, including loss of value, and expenses arising at any time during or after such party's ownership, tenancy, occupancy or use of the Lot or portion thereof, as a result (directly or indirectly) of or in connection with (i) the breach of any prohibition in this Section or in the Environmental Covenants, or (ii) the presence of Hazardous Materials on, under or about the Lot, Master Common Area or any other portion of the Master Project. Any indemnity obligation shall include all costs incurred by any of the above-referenced indemnified parties for any investigations undertaken, any required or necessary repair, cleanup or detoxification, and the preparation and implementation of any closure, monitoring or other required plans.

For purposes of this Section, "Environmental Laws" shall mean any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, plans, risk management plans, recorded property covenants and/or restrictions, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future relating to health, safety or the

environment or to any Hazardous Materials (including, without limitation, any RMP as approved by the Regional Water Quality Board and/or any other regulatory agency, or its or their respective staffs), all environmental covenants, conditions and restrictions recorded against the Master Project or any portion thereof, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (12 U.S.C. Section 9601 et seq.), which are or become applicable to Owners, tenants, the Lot or any portion thereof, or the Master Project or any portion thereof. For purposes of this Section, "Hazardous Materials" shall mean any chemical, substance, material, controlled substance, object, condition, waste, living organism or combination thereof, which is or may be hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, malagenicity, phytotoxicity, infectiousness or other harmful or potentially harmful properties or effects, including, without limitation, tobacco smoke, petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs), refrigerants (including those substances defined in the Environmental Protection Agency's "Refrigerant Recycling Rule," as amended from time to time), and all of those chemicals, substances, materials, controlled substances, objects, conditions, wastes, living organisms or combinations thereof, which are now or become in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, such properties or effects.

**ARTICLE IX
ALLOCATION OF COMMON EXPENSES AND PERCENTAGE SHARE
PRIOR TO THE TRANSFER DATE**

9.1 **COMMON EXPENSE BUDGET.** Annually, not later than sixty (60) days prior to the beginning of Maintenance Party's fiscal year, Maintenance Party shall prepare and distribute to the Owners (for their information) a reasonably detailed Budget showing the anticipated Common Expenses that Maintenance Party anticipates will be incurred during the following fiscal year, net of any revenue or reimbursement from third parties pursuant to any mutual benefit agreements or other cost-sharing agreements entered into or assumed by, or binding upon, Maintenance Party.

9.2 **ALLOCATION OF COMMON EXPENSES.** Initially, the Common Expenses shall be allocated between and among the Owners of the First Phase as set forth in Exhibit E attached hereto and pursuant to the Percentage Shares set forth therein, and thereafter shall be allocated between and among the Owners of the Covered Property as additional Phases and Annexable Area are made part thereof. The allocation of Percentage Shares among existing Owners and Covered Property shall be based on the ratio of the Land Area Square Footage applicable to each Lot within the Covered Property to total Land Area Square Footage applicable to all Lots within the Covered Property at the time such allocation is determined, provided that all allocations of Percentage Shares shall be subject to adjustment from time to time as more particularly set forth in this Article IX or in Section 17.2.5 to accommodate Annexed Territory and/or revisions to the Covered Property. If multiple Owners hold title to any Lot, individually or through any Subassociation, they and any ground lessees constituting Members of the Association (if applicable for said Lot) shall be jointly and severally liable for payment of the Percentage Share and other charges attributable to such Lot.

9.3 **THIRD PARTY CONTRIBUTORS.** Third parties outside of the Covered Property or Master Project may offer or otherwise propose to enter into contracts for use of, and contribution towards, the costs of operating and maintaining, the Master Common Area. Maintenance Party may accept or reject such proposal in its sole discretion.

9.4 **PAYMENT OF PERCENTAGE SHARE**

9.4.1 **Monthly Payment.** On or before the first (1st) day of each calendar month, each Owner shall deliver a payment to Maintenance Party in an amount equal to one-twelfth (1/12th) of such Owner's Percentage Share for the total Common Expenses set forth in the applicable fiscal year Budget (the "*Monthly Payment*").

9.4.2 **Mid-Year Budget Adjustments.** In the event that Maintenance Party reasonably determines during the course of any fiscal year that the Common Expenses will likely differ, by more than five percent (5%) greater or less, the amount set forth in the Budget on which the Monthly Payment was initially determined, Maintenance Party shall distribute an updated Budget and the amount of all Monthly Payments due and owing from and after distribution of the updated Budget shall be adjusted based on the Common Expenses set forth in the updated Budget spread over the remaining number of months in such fiscal year (less any Monthly Payments received prior to distribution of the updated Budget).

9.4.3 **Subassociations.** Each Subassociation having authority over any Lots, or portions thereof or Improvements thereon, within the Covered Property covenants and agrees to exercise its authority under its governing documents to levy and collect from its members assessments in such amounts as are necessary to satisfy the Percentage Share payments applicable to said Lots under this Agreement and to otherwise the maintenance and other responsibilities of the Owner to the extent that the Subassociation as assumed responsibility therefor under any Subordinate Declaration. Each Subassociation and Owner agrees that Maintenance Party shall have the right to enforce the foregoing covenants by all means available at law or in equity, including without limitation, specific performance of the Subassociation's obligation to impose and collect assessments in amounts necessary to fund satisfaction of the payment obligations imposed on such Lot by this Declaration. Without limiting the foregoing, the Lot's Owners (including the Subassociation, if applicable) each specifically consent to appointment of a receiver to impose any such required assessments, to collect such assessments and to apply the assessments so collected, after payment of all expenses relating to "essential services" within the meaning of California Civil Code Section 6804(a), to payment of any amounts then due and owing by such Subassociation or Owners hereunder.

9.5 **ANNUAL TRUE-UP REPORT; OWNER INSPECTION.** Within ninety (90) days of the end of each fiscal year, Maintenance Party shall deliver a report to each Owner (the "*True-Up Report*") detailing (a) the actual amount of Common Expenses incurred, and revenue received, by Maintenance Party in satisfying its obligations under this Declaration, (b) Owner's total Percentage Share allocation (based on such actual expense and revenues) and, (c) the total amount of Monthly Payments received from Owner for the preceding fiscal year. Each Owner shall have the right to inspect and make copies of all records pertaining to the Common Expenses for a particular fiscal year; provided that any demand for such inspection shall occur within one (1) year of the date the subject Owner receives its annual True-Up Report. Such right of

examination shall be exercised during reasonable business hours at the principal records office of Maintenance Party and on reasonable prior notice thereto.

9.5.1 **True-Up Payments.** In the event that the total amount of Monthly Payments made with respect to any Lot during the applicable fiscal year is less than Owner's Percentage Share allocation (based on actual Common Expenses) described in the True-Up Report, such Owner shall pay the difference (the "**True-Up Payment**") to Maintenance Party within ten (10) days after receipt of the True-Up Report. The True-Up Payment shall be an obligation of the Owner holding title to the applicable Lot on the date that the True-Up Report is sent by Maintenance Party to the Owner of a Lot. To the extent that the total amount of Monthly Payments made with respect to any Lot during the applicable fiscal year exceeds the Percentage Share allocable to that Lot, the Owner of the Lot shall receive a credit (equal to the amount of said excess) against the next subsequent Monthly Payments due with respect to the Lot.

9.6 **EXEMPT PROPERTY.** The following property is exempt from any Percentage Share contribution imposed pursuant to this Declaration:

9.6.1 **Public Property.** All real property (a) within the Covered Property dedicated to and accepted by a Governmental Authority, (b) owned by Governmental Authority or within a public right-of-way or easement for which the Development Conditions impose upon the Master Project, or any portion thereof, an ongoing maintenance or funding obligation.

9.6.2 **The Master Common Area.** Those portions of the Master Common Area that are owned in fee.

9.6.3 **Other.** Any Lot or Phase exempted from an allocation of a Percentage Share by the terms of the Supplemental Declaration annexing that Lot or Phase; provided that such areas are utilized for community-serving uses or other uses directly benefiting the Covered Property or the Owners of the Lots or otherwise required to satisfy Development Conditions.

ARTICLE X

COMMENCEMENT OF COMMON ASSESSMENTS AND ALLOCATION OF COMMON EXPENSES FOLLOWING THE TRANSFER DATE

10.1 **COMMON EXPENSE BUDGET.** Not later than sixty (60) days prior to the beginning of each fiscal year of the Association, the Board shall cause the Manager (or other qualified party) to prepare and distribute to the Owners, for their information, a reasonably detailed Budget showing the anticipated Common Expenses that the Association anticipates will be incurred during the following fiscal year, net of any revenue or reimbursement from third parties pursuant to any mutual benefit agreements or other cost-sharing agreements entered into or assumed by, or binding upon, the Association.

10.2 **COMMENCEMENT OF COMMON ASSESSMENTS.** Common Assessments (as well as any applicable Capital Improvement Assessments, Compliance Assessments, Extraordinary Assessments or Reconstruction Assessments) as to any given Lot shall commence when all of the following requirements are met:

10.2.1 **Transfer Date.** The Transfer Date shall have occurred pursuant to which the Association was assigned the rights, duties and obligations of the Maintenance Party; and

10.2.2 **Encumbrance by Declaration.** The Lot is encumbered by the Declaration as part of the Covered Property; and

10.2.3 **Authorization by Supplemental Declaration or Declarant.** If not expressly authorized by the Supplemental Declaration, Declarant otherwise authorizes the Board in writing to commence assessing the Lot.

10.3 **ESTABLISHING COMMON ASSESSMENTS.** Common Assessments shall be initially levied against the Lots (and their Owners) according to the initial Budget of the Association. Thereafter, Common Assessments shall be adjusted in accordance with the revised Budget approved by the Board from time to time. If the Board determines that Common Expenses may be properly paid by collection of a Common Assessment in an amount less than the Common Assessment required by the Budget for the year, the Board may levy a Common Assessment which is less than the Budgeted amount. If the Board determines that the Common Assessment being collected is or will become inadequate to pay all Common Expenses, the Board shall immediately determine the approximate amount of the inadequacy and levy a supplemental Common Assessment.

10.3.1 **Association Maintenance of Master Common Area.** Prior to commencement of the Association's maintenance obligations as to any portion of the Master Common Area, an interest in such portion (whether in fee, or by easement, ground lease, license or right of irrevocable entry or encroachment permit) shall be conveyed or otherwise granted to the Association as necessary to permit the Association to enter upon and perform its obligations relating thereto. The Association, acting through its Board, must accept maintenance responsibility for (and if directed by Declarant, the foregoing interest in) each portion of the Master Common Area when maintenance responsibility is tendered by Declarant, and in connection therewith shall execute an acceptance of each deed or other instrument and any accompanying escrow instructions if requested to do so by Declarant.

10.4 **ACCOUNTS OF THE ASSOCIATION.** The Association's general operating funds and general reserve funds shall be established as trust accounts at a banking or savings institution and may be combined so long as reserve funds are not combined with operating funds (and are otherwise treated as separate) for accounting purposes.

10.4.1 **Association Accounts.** The Board shall budget, establish and maintain at least the following accounts (the "**Association Accounts**") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided in the Declaration, in the Association's performance of its functions:

(a) **General Operating Fund.** A general operating fund for current expenses of the Association, exclusive of current expenses attributable to the Special Benefit Areas, if any.

(b) **General Reserve Fund.** If the Board has included reserve amounts with respect to any Assessment attributable to capital improvements for MCA

Improvements, then a general reserve fund for the deposit of said reserves shall be established, exclusive of reserves attributable to the Special Benefit Areas, if any.

(c) *Special Benefit Area Operating Fund.* For each special benefit area, if any, a separate Special Benefit Area operating fund for current expenses of the Special Benefit Area.

(d) *Special Benefit Area Reserve Fund.* If the Board has included reserve amounts with respect to any Assessment attributable to capital improvements for MCA Improvements constituting part of a Special Benefit Area, a separate Special Benefit Area Reserve Fund shall be established for the deposit of reserves attributable thereto.

(e) *Miscellaneous Accounts.* Any other accounts which the Board may deem necessary.

10.4.2 ***Disbursements from Association Accounts.*** Disbursements from the particular Association Accounts shall be limited to specific purposes as follows:

(a) *General Operations Disbursements.* Disbursements from the general operating fund shall be made for such purposes as are necessary for the discharge of the Association's responsibilities under the Governing Documents, for the common benefit of all Owners.

(b) *General Reserve Disbursements.* Disbursements from the general reserve fund shall be made solely for the purpose of funding those reserve expenditures that are not budgeted to a Special Benefit Area.

(c) *Special Benefit Area Operations.* Disbursements from each Special Benefit Area operating fund shall be made solely for the purpose of funding the current operating Common Expenses of the Special Benefit Area for which the fund was created.

(d) *Special Benefit Area Reserves.* Disbursements from each Special Benefit Area reserve fund shall be made solely for the purpose of funding reserve expenditures attributable to the Special Benefit Area for which the fund was created.

10.5 **COLLECTION OF COMMON ASSESSMENTS.** The Board shall fix the initial amount of the Common Assessment against each Lot within the Covered Property at least thirty (30) days in advance of each Fiscal Year based upon the Budget. Written notice of any change in the amount of any Common Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be delivered to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. The due dates, whether they are monthly, quarterly, or on some other schedule, shall be established by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate setting forth whether the assessments for a specified Lot have been paid. A properly completed certificate as to the status of Assessments against each Lot is binding upon the Association as of the date of its issuance. The Association may use any method of collecting Assessments allowed by law including charging credit cards or electronic transfers. The Board may make different Assessment collection arrangements with the different Owners. The Board may allow an Owner

to pre-fund the Owner's Assessment obligation with an annuity or other funding mechanism the Board determines is appropriate. At the Association's discretion, the additional cost of any method of collection can be collected from the Owner electing the method of collection and does not have to be divided equally among all Owners.

10.6 SPECIAL ASSESSMENTS. The Board may levy, in any Fiscal Year, a Capital Improvement Assessment, Reconstruction Assessment or Extraordinary Assessment (each, a "*Special Assessment*") for purposes authorized in the Declaration or in this or any other Supplemental Declaration.

10.7 EXEMPT PROPERTY. The following property is exempt from assessments imposed pursuant hereto:

10.7.1 Public Property. All portions of the Covered Property dedicated to and accepted by a Government Agency.

10.7.2 The Master Common Area. Those portions of the Master Common Area that are owned in fee.

10.7.3 Other. Any areas exempted from assessments in a Supplemental Declaration; provided that such areas are utilized for community-serving or non-profit uses directly benefiting the Covered Property or the Owners of the Lots or otherwise required to satisfy the requirements for development or operation of the Covered Property of a Governmental Authority.

10.8 SPECIAL BENEFIT AREAS. In the event that Declarant or the Board, in each case in their reasonable discretion, determines that any one (1) or more Lots within the Covered Property, or the Owner or occupants thereof, benefit more than the Covered Property as a whole from special or unique services or benefits provided by the Association, then Declarant or the Board, as applicable, shall have the right, but not the obligation, to establish a Special Benefit Area consisting of the Lot(s) benefited by such special services. Special Benefit Areas may be designated by Declarant or the Board in a Supplemental Declaration recorded against the Lot(s) to be included within such Special Benefit Area; provided that, to the extent any such Lot(s) have been conveyed by Declarant prior to the creation of such Special Benefit Area, such Supplemental Declaration must be executed by all of the Owner(s) of the Lot(s) subject to the designated Special Benefit Area. Costs related to the special services or benefits provided to Lot(s) within such Special Benefits Area shall be assessed only against the Owners of such Lot(s) and may be allocated among such Owners by any method determined by Declarant and the Board to be reasonable or appropriate under the circumstances. The additional administrative and operating costs of each Special Benefit Area shall be included a part of the Common Expenses allocated to the Owners of the Lot(s) within the Special Benefit Area. All provisions requiring the vote or approval of a specified percentage of Owners regarding services or benefits to be provided to Owners within any Special Benefit Area shall only require the vote or approval of the requisite percentage of Owners who are responsible for payment of Assessments attributable to the Special Benefit Areas Area.

10.9 NONPAYMENT OF ASSESSMENTS.

10.9.1 **Delinquency.** Any installment of an Assessment is delinquent if not paid within ten (10) days after the due date established by the Board. The Board may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 6808. Any Assessment installment not paid within thirty (30) days after the due date, plus all late charges (if applicable) and reasonable costs of collection (including attorneys' fees) shall bear interest at the maximum legal rate commencing thirty (30) days from the date the Assessment becomes due and continuing until paid. The Association need not accept any tender of a partial payment of an amount due and acceptance of any such tender does not waive the Association's right to demand and receive full payment.

10.9.2 **Remedies.** The Association may bring an action at law against the Owner personally obligated to pay amounts due or may foreclose its lien against the Lot of such Owner. A suit to recover a money judgment for unpaid Assessments may be brought without foreclosing or waiving any lien securing the same, subject to the provisions of Section 6808, 6810 and 6858 of the California Civil Code; provided, however, that this provision (or any suit to recover a money judgment) does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court. In the event that the Association elects to enforce an Owner's obligation to pay Assessments by Recordation of a lien against such Owner's Lot, the provisions of this Section 10.9.2 shall govern.

(a) **Priority of Assessment Lien.** Any Assessment Lien recorded pursuant hereto shall be prior and superior to all other liens, except (1) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of Record made in good faith and for value and Recorded before the date on which the "Notice of Delinquent Assessment" (described in this Section) is Recorded against the respective Lot. Sale or transfer of any Lot shall not affect the Assessment Lien, except that the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a First Mortgage extinguishes the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer relieves such Lot from liens for any Assessments becoming due after the sale or transfer. No Person who obtains title to a Lot pursuant to a judicial or nonjudicial foreclosure of the First Mortgage is liable for the share of the Common Expenses or Assessments chargeable to such Lot which became due prior to the acquisition of title to the Lot by such Person. Such unpaid share of Common Expenses or assessments is a Common Expense collectible from all of the Owners including such Person.

(b) **Creation of Lien.**

(i) **Notice of Intent.** At least thirty (30) days prior to Recording a lien upon an Owner's Lot to collect a past due Assessment, the Association shall send to such Owner by certified mail a written notice ("**Notice of Intent to Lien**") containing, at a minimum, the following information: (1) the collection and lien enforcement procedures of the Association, (2) an itemized statement of the charges owed by the Owner (including the principal owed, any late charges, any interest, and the method of calculation of such interest or late charge and any attorney fees incurred by the Association as a result of such delinquency) and a description of the method of calculation of all sums applicable to the lien, (3) the following statement in 14-point boldface type or all capital letters: "IMPORTANT NOTICE: IF YOUR

SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION,” (4) a statement that the Association may recover reasonable costs of collecting past due Assessments, (5) a statement that the Owner has the right to inspect the Association’s records, pursuant to California Corporations Code Section 8333, (6) statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined the Assessment was paid on time to the Association, and (7) such information as may be required by Civil Code Section 6812 in effect on the date hereof (or as modified or superseded by successor statutes applicable hereto).

(ii) Board Decision to Record Lien. The decision to record a lien for delinquent Assessments with a power of sale by trustee shall be made by the Board by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(iii) Dispute by Owner. If, within fifteen (15) days of the postmark of the Notice of Intent to Lien, an Owner submits to the Board a written dispute thereof with an explanation of the reasons for the Owner’s dispute of the Notice of Intent to Lien, then the Board shall promptly respond in writing to such Owner, and in any event within fifteen (15) days of its receipt of such Owner’s explanation.

(iv) Notice of Delinquent Assessment. At any time thirty (30) days or more after mailing of the above-referenced Notice of Intent to Lien, the Association may Record a Notice of Delinquent Assessment against the Lot of the delinquent Owner in the form described under, and as provided in, California Civil Code Section 6814. The Notice of Delinquent Assessment must be signed by an authorized Association officer or agent and must recite (i) a sufficient description of the Lot, (ii) the record Owner thereof, (iii) the amount of the Assessment and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (iv) the amount of collection costs incurred, including reasonable attorneys’ fees, and expenses, (v) the Association’s name and address, and (vi) in order for the lien to be enforced nonjudicially by trustee sale foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment must be mailed to the delinquent Owner, by certified or registered mail, postage prepaid, as set forth in Section 2924b of the California Civil Code, no later than ten (10) calendar days after Recordation. Recordation of the Notice of Delinquent Assessment creates a lien on the Lot of the delinquent Owner as provided in Section 6814 and 6816 of the California Civil Code. The lien shall continue until the full amount claimed therein is paid or otherwise satisfied. An action may be brought to enforce the lien upon the expiration of thirty (30) days following Recordation of the applicable Notice of Delinquent Assessment.

(v) Service of Notice of Default. In addition to the requirements of Section 2924, a notice of default shall be served by the Association on the Owner’s legal representative in accordance with the manner of service of summons in the California Code of Civil Procedure, commencing with Section 415.10.

(c) Exceptions. Monetary penalties imposed by the Association as a disciplinary measure for failure of a member to comply with the governing documents (as distinguished and separate from unpaid assessments, late charges or cost reimbursements to the

Association) may not become a lien against an Owner's Lot enforceable by the sale thereof under Sections 2924, 2924b and 2924c of the California Civil Code.

(d) *Foreclosure Sale.* Provided that (i) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (ii) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby, the Board, its attorneys or other Persons authorized by the Board may conduct a public sale to foreclose an Association lien in accordance with the provisions of Sections 2924, 2924a, 2924b, 2924c and 2924f of the California Civil Code, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages, or in any other manner permitted by law. The Association, through duly authorized agents, may bid on the Lot at foreclosure sale, and acquire and hold, lease, encumber and convey the Lot. Upon completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of the Lot during any period of continued occupancy by the defaulting Owner or any Persons claiming under the defaulting Owner.

(e) *Receivers.* In addition to foreclosure and other remedies of the Association, each Owner, by acceptance of a deed to such Owner's Lot, conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Lot subject to the right, power and authority of the Association to collect and apply such rents, issues and profits to any delinquent assessments owed by such Owner, reserving to the Owner the right, prior to any default by the Owner in the payment of assessments, to collect and retain such rents, issues and profits as they become due and payable. Upon default, the Association may, at any time thirty (30) days or later following delivery to the Owner of a Notice of Delinquent Assessment, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness secured by the lien described herein, (a) enter in or upon and take possession of the Lot, (b) in the Association's name, sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner hereunder, and in such order as the Association may determine. The entering upon and taking possession of the Lot, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(f) *Release of Lien.* Upon the timely curing of any default for which the Association Records a Notice of Delinquent Assessment, the Association's officers shall, within twenty-one (21) days after payment of the full amount claimed in the Notice of Delinquent Assessment or other satisfaction thereof, Record an appropriate Notice of Satisfaction and Release of Lien. The Association shall provide the Owner with a copy of the Notice of Release or any other notice that the full amount claimed in the Notice of Delinquent Assessment has been satisfied. The Board may require payment by the defaulting Owner of a reasonable fee, to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the lien created hereunder upon any Lot shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the

certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

10.9.3 ***Payment Under Protest and Reservation of Rights.*** An Owner may pay under protest any disputed charge or sum levied by the Association, including, but not limited to, an Assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise. An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time.

ARTICLE XI DESIGN CONTROL

11.1 **ALTERATIONS TO MASTER COMMON AREA.** Except as expressly set forth in this Article, no improvement or work which alters or adversely affects the Master Common Area shall be made or done by any Person other than the Declarant or Maintenance Party. No Owner or Subassociation may perform any alterations to the Exclusive Use Area appurtenant to Covered Property owned thereby without the consent of Approving Authority (as defined in Section 11.3 below) in its sole discretion. Notwithstanding the foregoing, but subject to compliance with the provisions of this Article, the Land Use Restrictions, the Development Conditions, all Applicable Laws and other requirements of any Governmental Authority, each Owner or Subassociation may modify its Lot or owned Covered Property, the Exclusive Use Area appurtenant thereto and the route over the Master Common Area leading to the entrance of any Improvements located on its Lot or Subassociation property, at its sole expense, to facilitate access thereto by persons who are blind, visually impaired, deaf or physically disabled, or to alter a latent hazardous condition.

11.2 **APPROVAL FOR OWNER IMPROVEMENTS.** Construction of initial Improvements to the Lots shall be subject to review and control of Declarant on the terms set forth in any Land Use Restrictions. From and after completion of such initial Improvements, no Owner shall permit or cause any portion of such Owner's Lot, or any Improvements located therein, including landscaping, exterior Signs and affixed equipment (collectively, "***Owner Improvements***") to be altered, installed, constructed, reconstructed, replaced, assembled, maintained, relocated, removed or demolished (each, a "***Proposed Alteration***") unless such Proposed Alteration conforms to all applicable Governmental Requirements, the Land Use Restrictions and any Design Guidelines which may be adopted by the Maintenance Party from time to time pursuant to Section 11.3 below. Without limiting the foregoing, to the extent required by the Design Guidelines or other Project Area Guidelines adopted by the Declarant and the Approving Authority from time to time, no construction, installation or alteration of an Owner Improvement may be commenced or maintained until site plans, preliminary plans, final plans and specifications therefore and other materials required to be submitted pursuant to the Design Guidelines have been submitted to and approved in writing by the Approving Authority.

11.2.1 Exemptions.

(a) **Categorical Exemptions.** The Approving Authority may exempt from approval specific Improvements or classes of Improvements (provided, however, that any such categorical exemption shall require prior approval of the Declarant).

(b) **Identical Replacements.** Any Improvement may be repainted, resurfaced or repaired without such approval so long as such work on the Improvement employs substantially identical colors, materials and general appearance as last approved or used. Furthermore, Approving Authority consent shall not be required for the restoration or replacement of any Owner Improvement which will be substantially identical to the original improvements located within the Lot at the time the Owner acquired the Lot or any Owner Improvement subsequently installed within the Lot but previously approved by the Approving Authority pursuant hereto.

(c) **Declarant Exemption.** Notwithstanding any other provision of the Governing Documents, (i) Declarant shall not be required to obtain Maintenance Party approval or otherwise comply with the requirements of this Article with respect to their construction or development activities, (ii) Declarant may expressly designate a Person or Covered Property in a Supplemental Declaration (or other Recorded document) that is exempt from the requirements to obtain Approving Authority approval or otherwise comply with the requirements of this Article with respect to their construction or development activities, and (iii) Declarant may expressly designate a Person or Covered Property in a Supplemental Declaration (or other Recorded document) that must obtain approval from the Approving Authority and otherwise comply with the requirements of this Article with respect only to certain limited construction or development activities. Declarant may, at its option, establish an additional architectural or design review committee for any area of the Covered Property.

11.3 APPROVAL STANDARDS.

11.3.1 **Architectural Approving Authority.** Declarant shall be the initial "**Approving Authority**" for purposes of exercising all approval, inspection and enforcement rights set forth in this Article. Notwithstanding the foregoing, Declarant shall have the right (but not the obligation) to assign and delegate its rights and duties as Approving Authority to the Association at any time following the Transfer Date. Upon any such assignment and delegation, the Association's Board of Directors, or a committee designated thereby, shall constitute the Approving Authority for purposes of this Article. Either Declarant (or Association, to the extent that Declarant has delegated its rights and authority hereunder) may establish a committee of Owners of Lots within the Covered Property and empower such committee with its authority hereunder, whereupon said committee shall be deemed to be the Approving Authority hereunder. The Approving Authority shall have the power, but not the duty, to retain any other Persons (including agents or affiliates of Declarant) to advise the Approving Authority in connection with the review, approval and/or inspection of any Proposed Alterations pursuant to this Article.

11.3.2 **Design Guidelines.** Declarant and the Approving Authority (if any) may, in their reasonable discretion, adopt and revise from time to time guidelines (the "**Design Guidelines**") regarding architectural standards for Proposed Alterations to be constructed by or

on behalf of any Owner within the Covered Property. Such Design Guidelines may include, without limitation, identification of the types of Proposed Alterations requiring approval hereunder and required submittals and other procedures for such review as well as reasonable restrictions on the conduct of construction activity within the Covered Property so as to minimize damage to Master Common Area and/or other Lots and any other adverse impacts on the use and occupancy of other Lots within the Covered Property.

11.3.3 Basis of Approval. The Approving Authority shall review and approve, conditionally approve or disapprove all plans submitted to it for any proposed construction, installation or alteration on the basis of any and all factors which it may deem relevant, including without limit, consistency with the Design Guidelines, the Governing Documents and the Land Use Restrictions, and the overall benefit or detriment which would result to the immediate vicinity and the Covered Property generally. The Approving Authority shall consider, among other matters, aesthetic aspects of the architectural designs, placement of buildings, affect on pedestrian and vehicular traffic flow, location of driveways and service areas, landscaping, color schemes, exterior finishes and materials and similar features; provided, however, that neither the Design Guidelines nor any other criteria utilized by the Approving Authority shall apply to any interior elements of the Improvements not visible from other Lots, Master Common Area or public or private streets within the Covered Property except to the extent that any subterranean construction may impact adjacent lands, groundwater or soils mitigation or remediation concerns. The Approving Authority is not responsible for reviewing, nor may its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. Without limiting the foregoing, the Approving Authority shall approve materials submitted for its approval only if it determines that the installation or construction of the Proposed Alterations contemplated thereby in the manner indicated therein will comply with the Design Guidelines, Land Use Restrictions and Applicable Law and will not otherwise be detrimental to the appearance or operation of the surrounding area of the Covered Property as a whole.

11.3.4 Variances. The Approving Authority may authorize variances from compliance with any of the architectural and landscaping provisions of the Governing Documents, including without limit, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. If such variances are granted, no violation of the covenants, conditions and restrictions contained in the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance does not waive any of the terms and provisions of the Governing Documents for any purpose except as to the particular Lot and particular provision hereof covered by the variance, nor does it affect the Owner's obligation to comply with all applicable governmental ordinances affecting the use of his Lot.

11.4 EXCULPATION. Neither Declarant, Maintenance Party, the Approving Authority nor any Person retained by the Approving Authority in connection with the review and approval of Proposed Alterations pursuant to this Article, shall be liable in damages to anyone making submittals as provided herein, or to any Owner, or other Person subject to or affected by this Declaration, on account of (a) the approval or disapproval of any submittal; (b) any construction, performance or nonperformance by an Owner of any work within a Lot, whether or

not pursuant to approved submittals; (c) any mistake in judgment, negligence, action or omission in the Approving Authority's exercise of its rights, powers and duties hereunder; or (d) the enforcement of or failure to enforce any of these Governing Documents. Every Person who makes submittals for approval of a Proposed Alteration agrees by reason of such submittal, and every Owner of a Lot agrees by acquiring title to any Lot or an interest therein affected by such Proposed Alteration, not to bring any suit or action against Declarant, Maintenance Party or the Approving Authority or any Person retained by any of the foregoing in connection herewith seeking to recover any such damages. Approval of any submittal by the Approving Authority shall not constitute the assumption of any responsibility by, or impose any liability upon, Declarant, Maintenance Party or the Approving Authority with respect to the accuracy or sufficiency of the submittal.

11.5 NO WAIVER OF FUTURE APPROVALS. The Approving Authority's approval of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring approval hereunder does not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

11.6 CONTRACTOR REQUIREMENTS. The Approving Authority shall have the right, but not the duty, to require as a condition to approval of any Proposed Alteration that the contractors or subcontractors to be engaged by the responsible Owner to perform any construction, installation or other services required in connection with the Proposed Alteration (collectively, the "*Work*") provide to the Approving Authority, prior to commencing Work within the Covered Property, proof of any workers' compensation insurance coverage required by law as well as commercial general liability insurance coverage against any claims or liabilities arising from the performance of the Work or other activities of such contractor or subcontractor on the Covered Property in connection therewith in an amount satisfactory to the Approving Authority in its reasonable discretion. The Approving Authority shall further have the right to require all such contractors and subcontractors to deliver certificates of insurance for the foregoing commercial general liability insurance naming the Approving Authority and Declarant as an additional insured thereunder. Without limiting the foregoing, the Approving Authority shall have the right, but not the duty, to disapprove any contractors or subcontractors engaged by an Owner to perform Work within the Covered Property to the extent that the failure to perform such Work in a good and workmanlike manner could have a material, adverse effect on the Master Common Area or any other Lot within the Covered Property.

11.7 COMMENCEMENT AND COMPLETION OF PROPOSED ALTERATIONS. Unless otherwise specified by the Approving Authority in its approval of a submittal, each Owner shall have a period of six (6) months after the date of approval by the Approving Authority within which to commence such Proposed Alteration in accordance with the approval. Each Owner shall give the Approving Authority at least fifteen (15) days prior written notice of the commencement of any Proposed Alteration. Approval of a submittal shall expire six (6) months after the date such approval is given. If an Owner fails to commence the work covered by such submittal in accordance with the approved document or documents within such period, any previous approvals for such work shall become invalid, and the Owner shall be obligated make a new submittal prior to commencing such work of Improvement. After a Proposed Alteration is commenced by an Owner, such Owner shall diligently pursue such

Proposed Alteration to completion in strict compliance with the approved submittals, the Land Use Restrictions and any other construction rules or regulations that may be adopted by Declarant, Maintenance Party or the Approving Authority from time to time.

11.8 INSPECTION OF WORK. The Approving Authority or its duly authorized representative may inspect any Work. The right to inspect includes the right to require any Owner to take such action as may be necessary to remedy any noncompliance with Approving Authority approvals for the Work or with the requirements of the Governing Documents ("**Noncompliance**").

11.8.1 Time Limit. The Approving Authority's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Approving Authority has received written notice from the Owner that the Work has been completed and the Work has, in fact, been completed. If the Approving Authority fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the Approving Authority approvals.

11.8.2 Remedy. If an Owner fails to remedy any Noncompliance within thirty (30) days from the date of notification from the Approving Authority or Maintenance Party (provided, if the Owner commences such remedial work during the 30-day period and thereafter diligently pursues completion of same, Owner shall not be deemed in breach of its obligations hereunder), then Maintenance Party may Record a Notice of Noncompliance and commence an alternate dispute resolution procedure or a lawsuit for damages or injunctive relief, as appropriate, to remedy such Noncompliance.

11.9 CERTIFICATE OF COMPLIANCE. Upon completion of the Proposed Alterations, whether or not the Approving Authority has exercised its right to inspect the Proposed Alteration pursuant to Section 11.8 above, the performing Owner shall, upon request by the Approving Authority, supply it with a certification by a licensed or registered architect or engineer that the Proposed Alterations have been completed in accordance with the final working drawings and specifications previously approved by the Approving Authority.

11.10 PRESUMPTION OF COMPLIANCE. Upon expiration of one (1) year after either (a) the date the County issued a final permit approval or certificate of occupancy for any Lot in which Proposed Alterations have been performed, if applicable, or (b) the Recording date of a valid notice of completion with respect to such Proposed Alteration, the Proposed Alteration shall, in favor of purchasers and Mortgagees in good faith and for value without knowledge of the Noncompliance and noncompletion, be deemed to be in compliance and completed in accordance with all provisions of this Article, unless either (i) an actual notice of Noncompliance or noncompletion thereof executed by or on behalf of Maintenance Party is Recorded, or (ii) legal proceedings are instituted by Maintenance Party to enforce compliance or completion.

11.11 REMOVAL OF LIENS. No Owner shall permit any mechanic's, or materialmen's, or other similar liens to be created or maintained against any Master Common Area or other Owner's Lot within the Covered Property to which labor or material has been performed or furnished in connection with the construction of a Proposed Alteration. An Owner may post a bond and contest any such lien at the Owner's sole expense.

ARTICLE XII
OWNERS' PROPERTY RIGHTS AND PROJECT EASEMENTS

12.1 **OWNERS' EASEMENTS OF ENJOYMENT.** Declarant hereby establishes for the benefit of each First Phase Owner, and, upon recordation of a Supplemental Declaration annexing additional Phases of Development within the Annexable Area to the Covered Property and this Declaration, the Owners of all subsequent Phases shall have, a non-exclusive easement of access, use and enjoyment of, in, to and over the Master Common Area and the MCA Improvements, which easements shall be appurtenant and pass with title to every Lot within the Covered Property, subject to the qualifications, limitations and exceptions hereinafter set forth.

12.1.1 **Declarant's Right to Access.** Declarant, for itself and on behalf of its agents, representatives and prospective purchasers, reserves and retains the absolute right and easement to the nonexclusive use of the Master Common Area without cost, for access, ingress, egress, use and enjoyment, in support of its efforts to market, show and dispose of the Covered Property and the Annexable Area until Declarant no longer owns any portion of the Covered Property or the Annexable Area; provided, however, that such reserved rights shall not be exercised in a manner that prevents or unreasonably hinders Owners from their enjoyment of the rights to the Master Common Area established by this Declaration.

12.1.2 **Other Reserved Rights.** The foregoing easement shall be subordinate and subject to (a) all other rights and reservations of Declarant set forth in this Declaration, for its own behalf or on behalf of Maintenance Party, (b) Declarant's and Maintenance Party's right to add to, repair, reconstruct, replace or refinish any MCA Improvement or portion thereof on the Master Common Area, (c) Maintenance Party's right to maintain and repair the Master Common Area and MCA Improvements, including without limit the right to add to, replace, remove, enhance or plant landscaping or MCA Improvements upon any portion of the Master Common Area, (d) Maintenance Party's right to reasonably restrict access to sensitive landscaped areas, native habitat, maintenance facilities, open space areas and other areas of the Master Common Area so designated, including without limitation, the Conservation Area and the Open Space Lots, (e) Declarant's right to designate, by recorded Supplemental Declaration, exclusive use areas within portions of the Master Common Area for the exclusive use or maintenance by one or more Owners, including without limitation, common driveways, (f) Declarant's right to establish in a Supplemental Declaration, for the benefit of any Lot or Owner, reciprocal parking easements over portions of the Master Common Area on terms that Declarant determines are appropriate, in its sole and absolute discretion, (g) Maintenance Party's right to make portions of the Master Common Area and MCA Improvements available for use by Persons who are not Owners in the Covered Property on such terms and at such times as may be negotiated by Maintenance Party, and (h) the easements reserved in the other Sections of this Article.

12.2 **EASEMENTS FOR VEHICULAR/PEDESTRIAN TRAFFIC.** Declarant reserves, for the benefit of all the Covered Property and Owners, non-exclusive easements appurtenant for vehicular and pedestrian traffic over the private streets and walkways within the Master Common Area, subject to the parking provisions in Section 2.8 of this Declaration and subject to any Exclusive Use Area easements or other rights which would preclude any such access.

12.3 EASEMENTS FOR PUBLIC SERVICE USE. Declarant reserves easements over the Covered Property for public services, including but not limited to, the right of law enforcement and fire protection personnel to enter upon any part of the Covered Property for the purpose of carrying out their official duties; which easements shall be for the benefit of Declarant, Maintenance Party, the Covered Property and the Owners of the Lots located therein.

12.4 EASEMENTS FOR WATER, UTILITY, MONITORING AND REMEDIATION FACILITIES AND ACTIVITIES. Declarant reserves easements over the Covered Property for public and private utility purposes, including but not limited to, the right of any public utility or mutual water district to egress over the Covered Property for purposes of reading and maintaining meters, and using and maintaining fire hydrants located in the Covered Property. Declarant reserves easements over the Covered Property for installation, maintenance, inspection and access to existing and future environmental monitoring or remediation equipment or facilities. To comply with the requirements of a Governmental Authority, either Declarant or Maintenance Party shall have the right to install monitoring and extraction wells, meters and other monitoring or remediation equipment or facilities anywhere in the Covered Property and to enter the Covered Property to maintain, collect information from and remove such wells, meters and monitoring or remediation equipment. Maintenance Party and Owners must not interfere with the Declarant's exercise of the rights reserved in this Section.

12.5 MASTER TELECOMMUNICATIONS EASEMENT. Declarant has reserved, or will reserve upon conveyance of each Lot or Covered Property, certain exclusive and nonexclusive easements over the Master Common Area and those portions of the building setback areas on Lots that border public or private streets for access, ingress and egress for purposes of installing, operating, maintaining, repairing, inspecting, removing and replacing wires, fibers, lines, antennae, satellite dishes, wireless transmission towers, and related facilities and equipment (the "*Telecommunications Infrastructure*") supporting telecommunication, internet service, data, video and cable television, and wireless services and signals (the "*Services*"). Such easements are freely transferable by Declarant to any other individual or entity and their successive owners for the purpose of providing the Services to the Covered Property and areas in and around the Master Project. With respect to any Telecommunications Infrastructure installed by Declarant within the Covered Property in exercise of its reserved easement rights, such Telecommunications Infrastructure shall remain the property of Declarant, its subsidiaries, successors, transferees and assigns, and transfer of all or any portion of the Covered Property by Declarant to an Owner does not imply the transfer of any such Telecommunications Infrastructure located thereon. Exercise of the easements reserved in this Section shall not unreasonably interfere with the reasonable use and enjoyment of the Covered Property by the Owners.

12.6 MAINTENANCE PARTY MAINTENANCE AND REPAIR. Declarant reserves for the benefit of Maintenance Party and all Maintenance Party's officers, employees, contractors, agents and representatives, nonexclusive easements over the Lots for purposes of access, inspection and maintenance as reasonable necessary or convenient to fulfill the obligations and perform the duties of Maintenance Party hereunder. Without limiting the foregoing, Declarant further reserves for the benefit of Maintenance Party and all Maintenance Party's agents, officers and employees, nonexclusive easements over each of the Lots for purposes of satisfying any maintenance obligations of the Owner of such Lot pursuant to

Section 5.1 above or otherwise enforcing, by peaceful means, the provisions of this Declaration should the Owner of such Lot fail to perform such maintenance or remedy any other noncompliance with this Declaration. The cost of such enforcement, maintenance and repair shall be reimbursed by Owner to Maintenance Party, together with a ten percent (10%) administrative fee, within ten (10) days of written demand therefor.

12.7 MISCELLANEOUS EASEMENTS. Declarant expressly reserves, for the benefit of Maintenance Party and, where indicated below, Declarant, the Covered Property and the Owners of the Lots located therein, the following easements provided that the exercise of the following easements shall not unreasonably interfere with the reasonable use and enjoyment of the Covered Property in a manner consistent with this Declaration (as amended or supplemented pursuant to the terms hereof):

12.7.1 Utilities. Reciprocal, nonexclusive easements over all Lots and the Master Common Area as necessary for maintenance and repair of utility services which easements shall be for the benefit of Maintenance Party, Declarant, the Covered Property and the Owners of the Lots located therein.

12.7.2 Drainage. Reciprocal, nonexclusive easements for drainage of water over, across and upon adjacent Lots and the Master Common Area resulting from the normal use of adjoining Lots or the Master Common Area which easements shall be for the benefit of Maintenance Party, Declarant, the Covered Property and the Owners of the Lots located therein.

12.7.3 Inspection, Maintenance and Repair. Nonexclusive easements for access to perform necessary inspection, maintenance and repair of any Improvement constructed by Declarant which easements shall be for the benefit of Declarant and Maintenance Party.

12.7.4 Easements on Maps. Easements as shown on any Recorded subdivision map or Recorded parcel map of any portion of the Covered Property which easements shall, unless otherwise specified therein, be for the benefit of Declarant, Maintenance Party, the Covered Property and the Owners of the Lots located therein.

12.7.5 Encroachments. Easements for minor encroachment and maintenance if any Improvement upon a Lot encroaches upon the Master Common Area or if the Master Common Area Improvements encroach upon any Lot as a result of construction by Declarant or as a result of construction or reconstruction approved by the Approving Authority, or the repair, shifting, settlement or movement of any portion of, or Improvement of the Covered Property which easements shall be for the benefit of Declarant, Maintenance Party, the Covered Property and the Owners of the Lots located therein.

12.7.6 Environmental Monitoring and Remediation. Easements for the benefit of Declarant and Maintenance Party over all Lots and the Master Common Area for installation, maintenance, inspection and removal of monitoring or extraction wells, meters and other remediation facilities reasonably necessary for environmental monitoring and remediation efforts of the Maintenance Party or as necessary to comply with the requirements of any Governmental Authority relating thereto. Such easements shall include the right to connect to any public utility, sewers or water district lines located on such Lot or Master Common Area.

Maintenance Party shall work with Owner in the placement of any monitoring or extraction wells, meters or other remediation facilities relating to environmental monitoring and remediation on the Property so as to optimize remediation and to minimize, to the extent practicable, material detrimental impacts on Improvements or operations occurring on the Covered Property.

12.7.7 Storm and Surface Water Collection and Monitoring. Easements permitting Declarant, Maintenance Party or their respective consultants, to enter upon all Lots and the Master Common Area to access, collect, sample, monitor and test storm water or other surface water thereon for reporting, collecting data, or compelling Owner's compliance with the requirements of any Governmental Authority, the Development Conditions, the HMMP or the Water Quality Instruments.

12.8 RIGHT OF ENTRY. The following provisions shall govern entry by Declarant or Maintenance Party onto any Lot pursuant to any of the foregoing easements. Except in the case of an emergency (for which, no prior written notice to the Owner of the Lot shall be required), entry onto any Lot pursuant to such authority shall require at least three (3) days' advance written notice to the Owner of the Lot. Notwithstanding the foregoing, Maintenance Party shall have the right to enter into the Exclusive Use Area appurtenant to any Lot at any time for purposes of maintenance, inspection or the performance of any other obligation of Maintenance Party hereunder or as required by the Development Conditions or any Governmental Authority. The provisions of this Section shall not be deemed to limit or otherwise apply to any entry by Maintenance Party into any Master Common Area, including any portions thereof designated as Exclusive Use Area.

12.9 DELEGATION OF USE. Any Owner entitled to the right and easement of use and enjoyment of the Master Common Area may delegate those rights and easements to such Owner's tenants, contract purchasers, subtenants or other occupants of the Improvements on such Owner's Lots, subject to reasonable regulation by Maintenance Party.

12.10 WAIVER OF USE. No Owner may exempt himself from personal liability for Owner's Percentage Share allocation and funding obligation to Maintenance Party, nor release his Lot from the liens and charges hereof, by waiving the use and enjoyment of the Master Common Area or any facilities thereon or by abandoning the whole or any portion of Owner's Lot.

12.11 TAXES. Each Owner shall take such action as Maintenance Party may reasonably specify to obtain separate real estate tax assessment of each Lot. If any taxes or assessments may, in Maintenance Party's opinion, become a lien on the Master Common Area or any part thereof, Maintenance Party may pay them as a Common Expense and charge Maintenance Party's costs to the appropriate Owner or Owners, together with a ten percent (10%) administrative charge thereon, which amount shall be reimbursed by said Owner or Owners within ten (10) days of written demand therefor.

ARTICLE XIII INSURANCE

13.1 MAINTENANCE PARTY INSURANCE

13.1.1 **Casualty Insurance.** Maintenance Party shall procure and maintain all risk property insurance for loss or damage to all insurable MCA Improvements and fixtures originally installed by Declarant or Maintenance Party on the Master Common Area with coverage amounts of no less than one hundred percent (100%) of the full replacement cost of the Improvement and other property, and may obtain such additional insurance against such other hazards and casualties as Maintenance Party deems desirable if commercially reasonable and maintained by reasonably prudent owners, community managers, property managers or associations of similar properties. Maintenance Party may also insure any other property whether real or personal, owned by Maintenance Party, against loss or damage by fire and such other hazards as Maintenance Party may deem desirable, with Maintenance Party as the owner and beneficiary of such insurance. The insurance coverage with respect to the Master Common Area shall be written in the name of, and the proceeds thereof shall be payable to Maintenance Party. Insurance proceeds shall be used by Maintenance Party for the repair or replacement of the property for which the insurance was carried, with any excess proceeds not applied to restoration to be credited against the Common Expenses allocated to the Owners. Premiums for all insurance carried by Maintenance Party shall be includable as part of the Common Expenses.

13.1.2 **Liability and Other Insurance.** Maintenance Party shall have the power and duty to procure and maintain commercial general liability insurance, including medical payments and malicious mischief, in such limits as are commercially reasonable and prudent covering all claims for personal injury and property damage arising out of a single occurrence, insuring against liability for bodily injury, death and property damage arising from the activities of Maintenance Party hereunder or with respect to property maintained or required to be maintained by Maintenance Party pursuant hereto including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Maintenance Party may also obtain Worker's Compensation insurance and other liability insurance as is customary or as Maintenance Party deems prudent, insuring each Lot Owner and Maintenance Party and Declarant from liability in connection with the Master Common Area, the premiums for which shall constitute an element of the Common Expense. All insurance policies shall be reviewed at least annually by Maintenance Party and the limits modified in its discretion. Maintenance Party may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring its directors and officers, and the project manager, against any liability for any act or omission in carrying out their obligations hereunder.

13.1.3 **Notice of Expiration Requirements.** If available on commercially reasonable terms, each of the policies of insurance maintained by Maintenance Party shall contain a provision that the policy shall not be cancelled, terminated, materially modified or allowed to expire by its terms, without ten (10) days' prior written notice to the Declarant and to each Owner and Mortgagee, insurer and guarantor of a Mortgage who has filed a written request with the carrier for such notice, and every other Person in interest who requests such notice of the insurer.

13.2 **INSURANCE OBLIGATIONS OF OWNERS.** Each Owner shall obtain all risk property insurance to insure the Improvements on Owner's Lot and Covered Property. All such insurance shall provide an agreed amount endorsement for no less than one hundred percent (100%) of the full replacement cost (new without deduction for depreciation) of the Improvements, fixtures and other property on the Lot. All such policies shall contain a provision that the same shall not be canceled or terminated, or shall not be renewed, except upon at least thirty (30) days' written notice to Maintenance Party. The Maintenance Party may have the right, but not the duty, to cure an Owner's failure to comply with this Section by purchasing the insurance on behalf of the Owner, who shall then be required to reimburse Maintenance Party, together with a ten percent (10%) administrative charge thereupon, for all costs incurred by Maintenance Party in obtaining the insurance. It shall further be the responsibility of each Owner to provide insurance on his personal property and to carry commercial general liability insurance in the amount and with coverage established from time to time by Maintenance Party to cover Owner's individual liability for injury to persons or damage to property occurring on his Lot. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of Maintenance Party. If any loss intended to be covered by insurance carried by or on behalf of Maintenance Party shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to Maintenance Party, to the extent of such reduction, for application to the same purposes as the reduced proceeds are to be applied. The insurance required under this Section may be provided under a blanket policy or policies and may, subject to the approval of Maintenance Party, be provided through a program of self insurance.

13.3 **WAIVER OF SUBROGATION.** All policies of insurance maintained by Maintenance Party or the Owners shall provide, if available on commercially reasonable terms, for a waiver of: (1) any defense based on coinsurance; and (2) any claim for subrogation and other rights of recovery as they might have against each other and their respective agents, employees, invitees and insurers with respect to all perils covered by whatever casualty insurance is in effect from time to time. As to each policy of insurance maintained by Maintenance Party which will not be voided or impaired thereby, Maintenance Party hereby waives and releases all claims against the Owners, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by such persons, but only to the extent that insurance proceeds are received in compensation for such loss.

ARTICLE XIV OWNER INDEMNITY.

14.1 **GENERAL INDEMNITY.** Subject to the provisions of Section 14.3 below, each Owner (the "*Indemnifying Owner*") shall protect, indemnify, defend, and hold Declarant, each other Owner, and Maintenance Party, harmless from and against all claims, expenses, liabilities, loss, damage, and costs, including without limit any actions or proceedings in connection therewith and reasonable attorneys' fees, incurred in connection with, or arising from (i) any breach of this Declaration or any Development Conditions or Land Use Restrictions by the indemnifying Owner or its tenants, licensees or permittees, (ii) any violation of Applicable Law (including Hazardous Materials laws) by indemnifying Owner or tenants, licensees or permittees in connection with use or occupancy of indemnifying Owner's Lot, (iii) any other

accident, injury, loss, or damage, howsoever caused, to any person or loss or damage to property as shall occur on the Indemnifying Owner's Lot.

14.2 **MASTER COMMON AREA.** Each Owner shall protect, indemnify, defend and hold harmless the Declarant, each other Owner, and Maintenance Party, from and against all claims, expenses, liabilities, loss, damage, and costs, including without limit any actions or proceedings in connection therewith and reasonable attorneys' fees, incurred in connection with, or arising from use of the Master Common Area or MCA Improvements by the Indemnifying Owner or tenants, licensees or permittees.

14.3 **GENERAL PROVISIONS.** Notwithstanding anything to the contrary in this Article, neither Maintenance Party nor Declarant nor any Owner shall be entitled to indemnification for any damage caused by or arising from its gross negligence or willful misconduct or the gross negligence or willful misconduct of its agents or contractors. Without limiting the foregoing, Maintenance Party, Declarant, and each Owner waives any right of recovery against the other Owners for any loss, damage, or injury to the extent the same is actually covered by insurance.

ARTICLE XV RIGHTS OF MORTGAGEES

15.1 **GENERAL PROTECTIONS.** Notwithstanding any other provision of this Declaration, no amendment or violation of the Declaration defeats or renders invalid the rights of the Mortgagee or Beneficiary under any first lien priority Mortgage or Deed of Trust (meaning any mortgage or deed of trust with first lien priority over all other mortgages or deeds of trust encumbering a Lot) upon one (1) or more Lots made in good faith and for value, provided that, after the foreclosure thereof, such Lot will remain subject to this Declaration.

15.2 **WRITTEN NOTIFICATION.** Each Mortgagee or Beneficiary, insurer and guarantor of a first lien priority Mortgage or Deed of Trust encumbering at least one Lot, upon filing a written request for notification with Maintenance Party, is entitled to written notification from Maintenance Party of the following:

15.2.1 Any condemnation or casualty loss that affects either a material portion of the Master Common Area or any MCA Improvements;

15.2.2 Any delinquency of sixty (60) days or more in the performance of any Owner obligation hereunder, including without limit any payment of the Percentage Share owed by the Owner(s) of the Lots securing the respective first Mortgage or Deed of Trust, which notice each Owner hereby consents to and authorizes; and

15.2.3 Any material amendment to this Declaration, as specified in 15.4 below.

15.3 **ADDITIONAL RIGHTS UPON REQUEST.** All Mortgagees, Beneficiaries, insurers and guarantors of a first lien priority Mortgages or Deeds of Trust encumbering at least one Lot, upon written request to Maintenance Party, shall have the right to examine copies of the records relating to Maintenance Party's incurring and subsequent payment of Common Expenses, and the allocation of an Owner's Percentage Share, during normal business hours.

15.4 **PRIORITY OF MORTGAGE LIENS.** No lien described under Section 16.2, below, nor any breach of this Declaration, nor the enforcement of any provision hereof defeats or renders invalid the rights of the Mortgagee or Beneficiary under any Recorded first lien priority Mortgage or Deed of Trust upon a Lot made in good faith and for value; except that, any Mortgage or Deed of Trust Recorded after the Recording by Maintenance Party of a Lien Notice shall be subject to the rights of Maintenance Party under that Lien Notice. After a Beneficiary or other Person obtains title to a Lot by judicial foreclosure or by means set forth in a Deed of Trust, the Lot shall remain subject to the Declaration and the payment of all installments of the applicable Percentage Share allocation accruing after the date the Beneficiary or other Person obtains title.

ARTICLE XVI ENFORCEMENT

16.1 **ENFORCEMENT OF THE GOVERNING DOCUMENTS.** Enforcement hereof by Declarant, Maintenance Party or any Owner shall be governed by the terms of this Article. All disputes arising under the Governing Documents, other than those described in Section 13.2 or Section 13.3 shall be resolved as follows:

16.1.1 **Violations Identified by Maintenance Party.** If Maintenance Party determines that there is a violation of the terms of this Declaration, or the Approving Authority notifies Maintenance Party that an Owner has not complied with the provisions of Article VII of this Declaration or that an Improvement which is the maintenance responsibility of an Owner needs maintenance, repair, restoration or painting, then Maintenance Party, in addition to any other remedies set forth in this Declaration, may give written notice to the responsible Owner identifying (i) the condition or violation complained of, and (ii) the length of time the Owner has to remedy the violation including, if applicable, the length of time the Owner has to submit plans to the Approving Authority and the length of time the Owner has to complete the work proposed in the plans submitted to the Approving Authority. If an Owner does not perform such corrective action as is required by Maintenance Party within the allotted time, Maintenance Party may (a) remedy such condition or violation complained of, whereupon the cost of causing such corrective action shall be reimbursed by said Owner to Maintenance Party, together with a ten percent (10%) administrative fee, within ten (10) days of written demand therefor, or (b) pursue legal or equitable remedies for damages or to compel compliance with Owner's obligations under this Declaration.

16.1.2 **Recorded Notice of Noncompliance.** If an Owner does not perform corrective action within the allotted time therefor pursuant to Section 16.1.1, above, Maintenance Party may Record against title to the Lot, or portion thereof on which the condition or violation exists, a notice of noncompliance (a "*Notice of Noncompliance*") against the Lot. Said Notice of Noncompliance shall attach any written notice delivered by Maintenance Party pursuant to Section 16.1.1, above, and must recite (a) a good and sufficient legal description of any such Lot, (b) the record Owner or reputed Owner thereof, (c) Maintenance Party's name and address, and (d) a brief description of the condition or violation requiring corrective action. Recordation of the Notice of Noncompliance creates a lien on the Lot as provided in the California Civil Code for the actual costs incurred by Maintenance Party to correct the noncompliance or enforce compliance by Owner, whether such costs are incurred before or after the Notice of

Noncompliance is Recorded. The Notice of Noncompliance must be signed by an authorized officer or agent of Maintenance Party, and must be mailed in the manner set forth in the California Civil Code to the record Owner of the Lot no later than ten (10) calendar days after recordation. Maintenance Party shall not be liable to Owner for any damages, costs, loss or injury resulting from the Recording, in good faith, any Notice of Noncompliance against title to a Lot or portion thereof.

16.1.3 **Legal Proceedings.** Failure to comply with any of the terms and obligations of this Declaration by an Owner, or any other Person deriving rights from Owner, is grounds for relief which may include, without limit, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof; provided, however, that the procedures described in Sections 16.1.1 above shall first be followed (to the extent the procedures are applicable).

16.1.4 **No Waiver.** Failure to enforce any provision hereof does not waive the right to enforce that provision, or any other provision hereof.

16.1.5 **Right to Enforce.** For so long as Declarant holds legal title to any real property within the Covered Property or Annexable Area, Declarant shall have the right, but not the obligation, to enforce any of the provisions of this Declaration subject only to compliance with the provisions of the California Civil Code.

16.2 REMEDIES FOR NONPAYMENT OF PERCENTAGE SHARE.

16.2.1 **Delinquent Amounts.** Any installment of a Monthly Payment, any True-Up Payment or any other payment required to be made by an Owner hereunder shall be delinquent if not paid within fifteen (15) days of the date due. Any such payment not made within thirty (30) days after the due date, together with all reasonable costs of collection (including attorneys' fees) incurred by Maintenance Party, shall bear interest at the maximum rate permitted by law until paid. Maintenance Party may bring an action at law against the Owner personally obligated to pay the same, or foreclose a lien against the Lot. Maintenance Party is under no obligation to accept tender of a partial payment of a delinquent amounts from the Owner or Owners obligated therefore; provided, however, any acceptance of any such tender by Maintenance Party shall not waive its right to demand and receive full payment thereafter or affect any collection actions commenced prior thereto.

16.2.2 **Notice of Delinquent Amount.** Before Maintenance Party may place a lien upon a Lot to enforce Owner's payment of a past-due amount, the Maintenance Party shall send a written notice (the "**Notice of Delinquent Amount**") to the Owner by reputable overnight courier or certified mail which contains the following information: (i) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges incurred and any interest amounts having accrued up to date of the notice (showing the method of calculation), (ii) the collection practices used by Maintenance Party, (iii) a statement that Maintenance Party may recover the reasonable costs of collecting past due amounts showing the costs, including attorneys' fees, accrued through the date of the notice, and (iv) a statement that Maintenance Party may Record a Lien Notice against the Lots.

16.2.3 **Lien Notice.** No action may be brought to enforce any lien created in this Declaration unless at least thirty (30) days has expired following the date on which the Notice of Delinquent Amount is sent in accordance with Section 13.2.2. Following expiration of the 30-day period, Maintenance Party may record a notice of lien for nonpayment of the delinquent amounts (a "**Lien Notice**") against the Lot of the delinquent Owner, which must attach a copy of the Notice of Delinquent Amount and must recite (a) a good and sufficient legal description of any such Lot, (b) the record Owner or reputed Owner thereof, (c) the amount claimed by Maintenance Party as being due, (d) Maintenance Party's name and address, and (e) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by Maintenance Party to enforce the lien by sale. Recordation of the Lien Notice creates a lien on the Lot or as provided in the California Civil Code. The lien continues until paid or otherwise satisfied. The Lien Notice must be signed by an authorized officer or agent of Maintenance Party, and must be mailed in the manner set forth in the California Civil Code to the record Owner of the Lot no later than ten (10) calendar days after recordation. Maintenance Party shall not be liable to Owner for any damages, costs, loss or injury resulting from the Recording, in good faith, any Lien Notice against a Lot.

16.2.4 **Foreclosure Sale.** A sale to foreclose any lien arising hereunder may be conducted by Maintenance Party, its attorneys or other Persons authorized by the Maintenance Party, as may permitted by the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any other manner permitted by law. Maintenance Party, through duly authorized agents, may bid on the Lot at foreclosure sale, and acquire and hold, lease, encumber and convey the same. Upon completion of the foreclosure sale, Maintenance Party or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of the Lot during any period of continued occupancy by the defaulting Owner or any Persons claiming under the defaulting Owner.

16.2.5 **Curing of Default.** Upon payment of all amounts for which Maintenance Party Recorded a Lien Notice, Maintenance Party shall cause to be Recorded an appropriate Release of Lien upon payment by the defaulting Owner of a reasonable fee to cover the cost of preparing and Recording such release.

16.2.6 **Cumulative Remedies.** The lien rights and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which Maintenance Party may have hereunder and by law, including a suit to recover a money judgment against the Owner or Owners for unpaid installments of an Owner's Percentage Share or other amounts as above provided.

16.2.7 **Priority of Liens.** Mortgages described in Section 12.1 that are Recorded prior to Recording a Lien Notice by the Maintenance Party shall have lien priority over the lien in favor of Maintenance Party with respect to said Lien Notice. Sale or transfer of any Lot does not affect the existence or priority of the lien, except that the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage extinguishes Maintenance Party's lien to the extent said lien secures payments that became due prior to such sale or transfer. No sale or transfer relieves such Lot from lien rights for any installments of Percentage Share (or other costs) thereafter becoming due. No Person who obtains title to a Lot pursuant to

a judicial or nonjudicial foreclosure of the first Mortgage is liable for payment of a Percentage Share relating to the period prior to the acquisition of title to the Lot by such Person. At such time as Maintenance Party determines, in its good faith discretion, that any installment of a Percentage Share has become commercially impracticable to collect (due to loss of lien rights, as herein described, or otherwise), such unpaid amount shall thereupon constitute a Common Expenses collectible from all of the Owners

16.2.8 Alternative Dispute Resolution of Monetary Disputes. If Owner delivers to Maintenance Party, not later than thirty (30) days after the date of the Notice of Delinquent Amount, both (1) full payment of the amount described in the Notice of Delinquent Amount together with a concurrent written statement of the Owner stating that such amount is paid under protest, and (2) written notice electing alternative dispute resolution of the payment dispute, Owner may elect to submit any dispute relating to said monetary obligation to the alternative dispute resolution procedures stated in Section 13.3, below.

16.3 DISPUTES WITH DECLARANT PARTIES. Any disputes (each a "*Declarant Party Dispute*") between any Owner (or, following the Transfer Date, the Association), on the one hand, and the Declarant, Maintenance Party or any director, officer, partner, member, employee, contractor, subcontractor, design professional or agent thereof (collectively "*Declarant Parties*") on the other hand, arising under the Governing Documents or relating to the Covered Property or any portion of the Annexable Area shall be subject to the following provisions; except that Declarant Party Disputes shall not include (a) any disputes where the amount in controversy is less than \$7,500, nor (b) any action taken by Maintenance Party to collect any delinquent Monthly Payment, True-Up Payment or other portion of the Percentage Share:

16.3.1 Notice. Any Owner asserting a Declarant Party Dispute (the "*Claimant*") against any Declarant Party shall give written notice of the Declarant Party Dispute by personal or mail service as authorized by Code of Civil Procedure Sections 415.10, 415.20, 415.21, 415.30 or 415.40 describing the nature of the Declarant Party Dispute and any proposed remedy (the "*Dispute Notice*") to the Declarant Party(ies) against whom such Declarant Party Dispute is asserted (the "*Respondent*").

16.3.2 Right to Inspect and Correct. Beginning on the date the Dispute Notice is delivered to the Respondent and continuing until the Declarant Party Dispute is resolved, the Respondent and its representatives have the right to (a) meet with the Claimant at a reasonable time and place to discuss the Declarant Party Dispute, (b) enter the Covered Property to inspect any areas that are subject to the Declarant Party Dispute, and (c) conduct inspections and testing (including destructive or invasive testing) in a manner deemed appropriate by the Respondent. If Respondent elects to take any corrective action, Respondent and its representatives shall be provided full access to the Covered Property to take and complete the corrective action. Respondent, with the consent of Maintenance Party, has the right to select the corrective action Respondent believes is appropriate but is not obligated to take any corrective action.

16.3.3 Mediation. If the Declarant Party Dispute is not resolved within sixty (60) days after Respondent's receipt of the Dispute Notice (or in the event that Respondent has

commenced corrective action pursuant to Section 12.2.2 above, ninety (90) days after receipt of the Declarant Party Dispute Notice), Maintenance Party or Respondent may require that the parties submit the Declarant Party Dispute to mediation. Failure of Maintenance Party or Respondent to submit the Declarant Party Dispute to mediation within the foregoing period shall constitute a waiver of such party's right to pursue mediation. Such Declarant Party Dispute shall be mediated pursuant to (a) the American Arbitration Association mediation procedures in existence when the Dispute Notice is delivered, or (b) mediation procedures of any other entity offering mediation services that is mutually acceptable to Claimant and Respondent. The provisions of California Evidence Code Sections 1115 through 1128 shall be applicable to the mediation process. Use and disclosure of statements, evidence and communications offered or made in the course of the mediation shall be governed by these Sections, including the Sections which preclude use of material in future proceedings and the Sections which provide for confidentiality of material. Each party shall bear its own attorneys fees and costs incurred in connection with the mediation. All other expenses of the mediation including the fees charged by the mediator and the cost of any proof or expert advice requested by the mediator, shall be borne by the Respondent unless the parties agree otherwise.

16.3.4 Judicial Reference. If a Declarant Party Dispute remains unresolved after completion of mediation entered into by the parties pursuant to the preceding Section, the Claimant may file a lawsuit. All lawsuits regarding Declarant Party Disputes must be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1, as modified by this Section 16.3.4:

(a) The referee shall be a retired judge who served on the Riverside County Superior Court with substantial experience in the type of matter in dispute and without any relationship to the parties or interest in the Master Project, unless the parties agree otherwise. Claimant and Respondent shall meet to select the referee no later than thirty (30) days after service of the initial complaint on the Respondent. Any dispute regarding selecting the referee shall be resolved by the court in which the complaint is filed.

(b) The general referee shall have the authority to try all issues of fact and law and to report a statement of decision to the court. The referee shall be the only trier of fact and law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other person unless (1) all parties to the judicial reference proceeding consent, or (2) the referee determines that a conflict of interest or similar situation has arisen which would make it inappropriate for the referee to act as the trier of fact or law concerning an issue or matter. In the second alternative, an alternative judicial referee shall be selected solely for resolving or rendering a decision concerning the issue or matter involved in the conflict.

(c) The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange of the following: (1) witness lists, (2) expert witness designations, (3) expert witness reports, (4) exhibits, (5) reports of testing or inspections, and (6) briefs. Any other discovery authorized in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the consent of both parties to the judicial reference proceeding.

(d) The referee shall have the power to hear and dispose of motions, including motions relating to discovery, provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary judgment and/or adjudication motions, in the same manner as a trial court judge. The referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies whether or not the issue adjudicated could dispose of an entire cause of action or defense. The referee may rule on all post-hearing motions in the same manner as a trial judge.

(e) The referee may grant all legal and equitable remedies and award damages in the judicial reference proceeding. The referee's statement of decision shall contain an explanation of the factual and legal basis for the decision pursuant to California Code of Civil Procedure Section 632. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Declarant Party Dispute had been tried by the court. The decision of the referee shall be subject to appeal in the same manner as if the Declarant Party Dispute had been tried by the Court.

(f) Each party shall bear its own attorney's fees and costs incurred in connection with the judicial reference proceeding. All other fees and costs incurred in connection with the judicial reference proceeding, including the cost of a stenographic record of the proceedings, shall be advanced equally by the Claimant and all Respondents against whom the Declarant Party Dispute has been asserted. However, the referee shall have the power to reallocate such fees and costs among the parties in the referee's final ruling. This provision does not modify any provision of any contract between Maintenance Party and any other Declarant Party(ies) requiring indemnification or establishing a different allocation of costs between Maintenance Party and such other Declarant Party.

16.3.5 Statute of Limitations. Nothing in this Section 16.3 shall be deemed to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that either party may commence a legal action which in the good faith determination of that party is necessary to preserve that party's rights under any applicable statute of limitations so long as no further steps in processing the action are taken except those authorized in this Section 16.3.

16.3.6 Agreement to Dispute Resolution; Waivers of Jury Trial; Amendment. MAINTENANCE PARTY AND EACH OWNER AGREE TO USE THE PROCEDURES ESTABLISHED IN THIS SECTION 16.3 TO RESOLVE ALL DECLARANT PARTY DISPUTES AND WAIVE THEIR RIGHTS TO RESOLVE DECLARANT PARTY DISPUTES IN ANY OTHER MANNER. DECLARANT, MAINTENANCE PARTY AND EACH OWNER ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DECLARANT PARTY DISPUTES AS PROVIDED IN THIS SECTION 16.3, THEY ARE GIVING UP THEIR RIGHT TO HAVE DECLARANT PARTY DISPUTES TRIED BEFORE A JURY. THIS SECTION 13.3 MAY NOT BE AMENDED WITHOUT MAINTENANCE PARTY'S AND DECLARANT'S PRIOR WRITTEN CONSENT.

16.4 COVENANTS RUNNING WITH LAND. The covenants contained in this Declaration shall constitute covenants running with the land; shall be binding upon, and shall inure to the benefit of the Covered Property. This Declaration shall further inure to the benefit of

the Declarant and all Annexable Area owned by Declarant (but only for so long as any portion thereof is owned by Declarant or any affiliate thereof), and shall be enforceable by Declarant for so long as any portion of such Annexable Area is owned by Declarant or any affiliate thereof; provided, however that nothing in this Section 13.4 shall be deemed to confer any rights or obligations hereunder to any successor-in-title to the interests of Declarant or any affiliate thereof in the Annexable Area or any portion thereof except to the extent any such rights are expressly assigned by Declarant to such successor-in-title.

ARTICLE XVII ANNEXATION OF ADDITIONAL PROPERTY

~~Additional real property within the Annexable Area may be annexed to the Covered Property and such additional real property may become subject to this Declaration by any of the following methods:~~

17.1 **TIMING OF ANNEXATIONS.** Declarant may, but shall not be required to, at any time or from time to time, without the approval of the Owners (or, following the Transfer Date, the Association), add to the Covered Property all or any portion of the Annexable Area by Recording a Supplemental Declaration encumbering the portion of the Annexable Area annexed thereby ("*Annexed Territory*").

17.2 **SUPPLEMENTAL DECLARATION CONTENT.** Each Supplemental Declaration annexing real property to the Covered Property shall contain at least the following provisions:

17.2.1 **Declaration Reference.** A reference to this Declaration, which reference shall state the date of Recordation hereof and the Instrument number or other relevant Recording data of the County Recorder's office.

17.2.2 **Extension of Comprehensive Plan.** A statement that the provisions of this Declaration shall apply to the Annexed Territory as set forth therein, subject to any addition, modification or deletions.

17.2.3 **Description/Phases of Development.** A description of the Annexed Territory. A Supplemental Declaration may cover one (1) or more Phases of Development, as designated in such Supplemental Declaration.

17.2.4 **Designation of Master Common Area.** A description of the Master Common Area, if any, within the Annexed Territory and any maintenance obligations of Maintenance Party or any Owner relating thereto.

17.2.5 **Update of Percentage Share Calculation.** An update to Exhibit D providing an allocation of Percentage Share among all Covered Property pursuant to the formula for computing Percentage Share described in Section 1.2.52 and Section 9.2, above. After the Transfer Date, the Association's board shall have the power and duty to adjust the Percentage Share of each Lot as necessary to comply with the formula for computing Percentage Share.

17.2.6 **Additions and Modifications.** Any Supplemental Declaration may contain such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexed Territory, or as Declarant deems appropriate in the development of the Annexed Territory, and as are consistent with the general plan of this Declaration.

17.2.7 **Special Benefit Area.** The identification of any portion of the Annexed Territory that constitutes a Special Benefit Area as described in Section 10.8.

17.3 **APPROVAL OF ANNEXATIONS.** Each Supplemental Declaration shall be signed by Declarant and by each record owner of the Annexed Territory described therein.

17.4 **ADDITIONS TO THE ANNEXABLE AREA.** Declarant may add additional real property outside of the Annexable Area to the Annexable Area and/or annex any such additional real property into the Covered Property to be brought within the general plan of this Declaration; provided, however, after the Transfer Date, approval of the Association shall be required for annexation of any such additional real property to the extent such annexation would materially and adversely affect the Percentage Share amount or Monthly Payment of the other Owners or otherwise materially and unreasonably increase the obligations of the Association.

17.5 **DEANNEXATION AND AMENDMENT.** Declarant may unilaterally delete all or a portion of a Phase of Development from coverage of this Declaration, so long as (a) Declarant is the Owner of the affected Lot, (b) Declarant has obtained written approval of deannexation from the County (by and through its Planning Director or such other official as County, or its successor, may hereafter authorize to grant approval therefor) with respect to such Covered Property, and (c) a Notice of Deletion is Recorded. Declarant may unilaterally amend all or a portion of a Phase of Development so long as (i) Declarant is the Owner of the affected Lot(s) or other Covered Property, (ii) in the event that a proposed amendment "substantially amends" (as that phrase is defined in Section 4.1) the Declaration, Declarant shall have obtained written approval of such amendment from the County (by and through its Planning Director or such other official as County, or its successor, may hereafter authorize to grant approval therefor), and (iii) Declarant causes a Supplemental Declaration to be Recorded setting forth the amendment applicable to such Covered Property. So long as Declarant is the Owner of the affected Annexable Area, Declarant may also unilaterally delete any portion of the Annexable Area by recording a Supplemental Declaration or a Notice of Deletion, as applicable, with respect to such portion.

17.6 **APPLICATION TO ANNEXED TERRITORY.** Upon the Recording of a Supplemental Declaration annexing property to this Declaration, all provisions contained in this Declaration will apply to the Annexed Territory described in such Supplemental Declaration in the same manner as if it were originally covered by this Declaration, subject to the provisions of the applicable Supplemental Declaration. Thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the Annexed Territory will be the same as with respect to the property originally covered hereby, and the rights, powers and responsibilities of the Owners, lessees and occupants of Lots within the Annexed Territory, as well as within the property originally subject to this Declaration, will be the same as if the Annexed Territory were

originally covered by this Declaration, subject to such modifications as may be provided for by Declarant in the Supplemental Declaration.

**ARTICLE XVIII
DISCLAIMERS; NOTICE; GENERAL PROVISIONS**

18.1 DISCLAIMERS AND PROXIMITY DISCLOSURES

18.1.1 No Representations Or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, Maintenance Party or their agents or employees in connection with the Covered Property or the Annexable Area, or any portion thereof, its physical condition, zoning, compliance with Applicable Laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned development, except as specifically and expressly set forth in this Declaration.

18.1.2 No Representations for Further Annexation. No obligation exists for Declarant to annex any further portions of the Annexable Area beyond the First Phase, and Declarant expressly disclaims any representation or duty of any kind to annex further portions of the Annexable Area.

18.1.3 Security And Privacy Disclaimer. Services provided by Maintenance Party and Improvements constructed or maintained by Maintenance Party may provide access control or other security benefit to the Covered Property and its occupants and users; however, these services and Improvements do not provide security for Persons, personal property or Lots within the Covered Property. Declarant and Maintenance Party do not undertake to provide security for the Covered Property nor do they make any representations or warranties whatsoever concerning the privacy and safety of the Covered Property. Neither Maintenance Party nor Declarant shall be liable to any Person and each Owner waives any claim against the Maintenance Party and Declarant, for (i) any unauthorized or criminal entry of third parties into the Covered Property, any Lot within the Covered Property or any Improvements within the Covered Property, (ii) any injury or damage to Persons, or (iii) any loss of property in and about the Covered Property, any Lot within the Covered Property or any Improvements within the Covered Property, by or from any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown, malfunction or insufficiency of the services and Improvements provided by Maintenance Party or Declarant.

18.1.4 Proximity to Airport. The Master Project is presently located in the vicinity of an airport, within what is known as an airport influence area. As a result, prospective purchasers, lessees and tenants should be aware that the property may be subject to some of the annoyances and inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. In particular, each prospective purchaser or lessee of any portion of the Covered Property should consider whether said party's intended use or operations on the Covered Property may

potentially interfere with or suffer interference from aircraft overflight or other airport operations.

18.1.5 Proximity to Agricultural and Livestock Uses. Owners are hereby notified, and each Owner shall notify any prospective lessees or occupants of the Covered Property, that the Master Project, and various individual Lots and buildings thereon, are located within three hundred (300) feet of an existing agricultural use or agriculturally zoned property, and all such agricultural properties shall have the continuing right to farm. The County has advised that it is the declared policy of the County that no agricultural activity, operation, or facility, or appurtenance thereof, conducted or maintained for commercial purposes in the unincorporated area of the County, and in a manner consistent with the proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after the same has been in operation for more than three(3) years, if it wasn't a nuisance at the time it began. The term "agricultural activity, operation or facility, or appurtenances thereof" includes, but is not limited to, the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any apiculture, or horticulture, the raising of livestock, fur bearing animals, fish or poultry, and any practices performed by a farmer or on a farm as incident to, or in conjunction with, such farming operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market

18.2 INTERPRETATION.

18.2.1 General Rules. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a planned development and for the maintenance of the Covered Property and Master Common Area. Any violation of this Declaration is a nuisance. The Governing Documents shall be interpreted so as to be consistent with Applicable Laws, including ordinances and regulations of any appropriate Governmental Authority. The Governing Documents shall be construed and governed by the laws of the State of California. The Article and Section headings have been inserted for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. As used in this Declaration, the singular includes the plural and the plural the singular; and the masculine, feminine and neuter each include the other, unless the context dictates otherwise. Except as otherwise expressly provided in this Declaration, any reference in this Declaration to time for performance of obligations or to elapsed time means consecutive calendar days, months, or years, as applicable. All exhibits attached to this Declaration are incorporated in this Declaration by this reference. All references made in this Declaration to statutes are to those statutes as amended or restated or to subsequently enacted replacement statutes.

18.2.2 Relationship to Other Governing Documents. If there are conflicts or inconsistencies between this Declaration and Design Guidelines or Project Area Guidelines, then the provisions of this Declaration shall prevail.

18.2.3 Severability. The provisions hereof are independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or

portion hereof by a court of competent jurisdiction does not affect the validity or enforceability of any other provision hereof.

18.3 AMENDMENT. Amendments to this Declaration shall require the approval of Owners (prior to the Transfer Date) or Members (following the Transfer Date) constituting or representing (as the case may be) a majority of the Percentage Share of the Covered Property. In the event that a proposed amendment "substantially amends" (as that phrase is defined in Section 4.1) the Declaration, written approval of such amendment shall be required from the County (by and through its Planning Director or such other official as County may hereafter authorize to grant approval therefor) or its successor.

18.3.1 Member Approval. Except as otherwise expressly provided in this Declaration, all amendments to this Declaration can be adopted by Members holding at least a majority of the voting power of the Association. The following amendments shall require approval by the Members as follows:

(a) any amendment to the methodology for allocating Percentage Shares set forth in Section 9.2 shall require the consent of seventy-five percent (75%) of the Class A voting power of the Association; and

(b) any amendment to the provisions of this Section 18.3 shall require the unanimous consent of all Members.

18.3.2 First Mortgagee Approval. In addition to the required notice and consent of Members and Declarant, the Beneficiaries of fifty-one percent (51%) of the First Mortgages on all the Lot in the Covered Property who have requested notifications of proposed action requiring the consent of a specified percentage of First Mortgagees must approve of any of the following amendments to the Governing Documents. For any Lot not encumbered with a First Mortgage, the vote of the Owner shall be deemed to constitute the vote of the beneficiary of the First Mortgage therefor and shall be counted for determining the requisite percentage necessary for approval.

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers and guarantors of First Mortgages in this Declaration.

(b) Any amendment which would or could result in a Mortgage being canceled by forfeiture.

(c) Any amendment relating to the insurance provisions or to the application of insurance proceeds or to the disposition of any money received in any taking under condemnation proceedings.

(d) Any amendment which would subject any Owner to a right of first refusal or other such restriction if such Lot is proposed to be sold, transferred or otherwise conveyed.

18.3.3 Notice to Mortgagees: Deemed Approval. Each Beneficiary of a First Mortgage on a Lot in the Covered Property which is sent written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested (or such other form of notice (such as telefacsimile or overnight delivery) as may be reasonably specified in such Beneficiary's written request for notice) shall be deemed to have approved the amendment or termination if the Beneficiary fails to submit a response to the notice within thirty (30) days after the date of the mailing receipt.

18.3.4 Certification of Amendments. A copy of each amendment shall be certified by at least two (2) Association officers, and the amendment will be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by at least two (2) officers of the Association that the requisite number of members have either voted for or consented in writing to any termination or amendment adopted as provided above, when Recorded, is conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for at least four (4) years. The certificate reflecting any termination or amendment which requires the written consent of any of the Beneficiaries of First Mortgages must include a certification that the requisite approval of such First Mortgagees has been obtained. The certificate reflecting any termination or amendment which requires the written consent of Declarant or is subject to Declarant's veto right must include Declarant's signature.

18.3.5 Unilateral Amendment. Notwithstanding any other provisions of this Section 18.3, at any time prior to the first Close of Escrow of a Lot to an Owner other than Declarant, Declarant may amend or terminate this Declaration by Recording a written instrument which effects the amendment and is signed and acknowledged by Declarant. Declarant (as long as Declarant owns any portion of the Annexable Area) may further unilaterally amend this Declaration by Recording a written instrument signed by Declarant (1) to conform this Declaration to any laws or regulations or any Governmental Authority or to the Development Conditions, (2) to correct typographical errors or amend, replace or substitute any Exhibit to correct typographical or engineering errors, (3) include any Exhibit that was inadvertently omitted from the Declaration at the time of Recording or (4) change any Exhibit or portion of an Exhibit to conform to as-built conditions. Notwithstanding the foregoing, Declarant may not unilaterally amend any provision of this Declaration pursuant to this Section 18.3.5 if such amendment would materially, tangibly and adversely affect the rights and obligations of any Owner holding title to any portion of the Covered Property as of the Recordation of such amendment.

18.3.6 Supplemental Declarations. As set forth in Article XVII hereof, Declarant may Record one (1) or more Supplemental Declarations against all or any portion of the Annexable Area for purposes of annexing the real property described therein into the Covered Property. Without limiting the foregoing, Declarant may also record a Supplemental Declaration against any portion of the Covered Property with the consent of the Owners of all Lots within such portion of the Covered Property. In either case, a Supplemental Declaration may designate the use classifications within the areas affected by a Supplemental Declaration and may further supplement this Declaration with such additional covenants, conditions, restrictions and land uses as Declarant may deem appropriate for the real property subject to such Supplemental Declaration; provided, however, that (i) Declarant may not permit any use

pursuant to a Supplemental Declaration that is expressly prohibited pursuant to Section 2.2, and (ii) the Owners of all Lots that are the subject of the subject Supplemental Declaration execute that Supplemental Declaration. Subject to the foregoing, the provisions of any Supplemental Declaration may impose such additional, different or more restrictive conditions, covenants, restrictions, land uses and limits as Declarant may deem advisable, taking into account the particular requirements of each Phase of Development. If there is any conflict between any Supplemental Declaration and this Declaration, the provisions of the Supplemental Declaration shall control with respect to the real property described in such Supplemental Declaration.

18.4 DURATION; TERMINATION. This Declaration and each term, easement, covenant, restriction and undertaking contained herein will remain in effect for a term of sixty (60) years from the Recordation hereof and will automatically be renewed for successive ten (10) year periods thereafter, unless both Maintenance Party and Owners representing at least sixty percent (60%) of the Percentage Share vote not to automatically renew the term of this Declaration following initial expiration thereof.

18.5 NO PUBLIC RIGHT OR DEDICATION. Nothing contained in this Declaration constitutes a gift or dedication of all or any part of the Covered Property to the public, or for any public use.

18.6 CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Covered Property does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limit, restriction, easement, reservation, condition and covenant contained in this Declaration, whether or not any reference to the Governing Documents is contained in the instrument by which such Person acquired an interest in the Covered Property or any portion thereof.

18.7 NOTICES. Except as otherwise provided in this Declaration, notice to be given to an Owner or Mortgagee must be in writing and may be delivered to the Owner or Mortgagee, as applicable, personally or by any system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. Delivery of such notice to one (1) or more co-owners of a Lot to any general partner of a partnership or to a member of a limited liability company constitutes delivery to all co-owners, the partnership or the limited liability company. Delivery of such notice to any officer or agent for the service of process on a corporation constitutes delivery to the corporation. Alternatively, notice may be delivered by reputable overnight courier or regular United States mail, postage prepaid, addressed to the Owner or Mortgagee at the most recent address furnished by such Owner or Mortgagee to the Association. If an Owner does not furnish an address, notice may be sent to the street address of an Owner's Lot. Notice by United States mail is deemed delivered three (3) business days after the time of such mailing.

18.8 MERGERS OR CONSOLIDATIONS. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a

merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by the Association Governing Document, together with the covenants and restrictions established upon any other property, as one plan.

[SIGNATURES ON FOLLOWING PAGE]

EXHIBIT A

LEGAL DESCRIPTION OF ANNEXABLE AREA

All that certain real property situated in the County of Riverside, State of California, more particularly described as follows:

PARCELS 1 TO 12, INCLUSIVE, AND LOTS A TO K,
INCLUSIVE, OF PARCEL MAP NO. 33691 AS SHOWN ON A
SUBDIVISION MAP RECORDED ON _____, 20__ AT
BOOK _____, PAGES ___ TO _____, INCLUSIVE, OF
MAPS IN THE OFFICIAL RECORDS OF THE COUNTY OF
RIVERSIDE, STATE OF CALIFORNIA

EXHIBIT B

LEGAL DESCRIPTION OF BENEFITED PROPERTY

All that certain real property situated in the County of Riverside, State of California, more particularly described as follows:

PARCELS 1 TO 5 AND 7 TO 12, INCLUSIVE, OF PARCEL
MAP NO. 33691 AS SHOWN ON A SUBDIVISION MAP
RECORDED ON _____, 20____ AT BOOK _____,
PAGES ____ TO _____, INCLUSIVE, OF MAPS IN THE
OFFICIAL RECORDS OF THE COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA

EXHIBIT C-1

LEGAL DESCRIPTION OF INITIAL MASTER COMMON AREA

PARCEL 1:

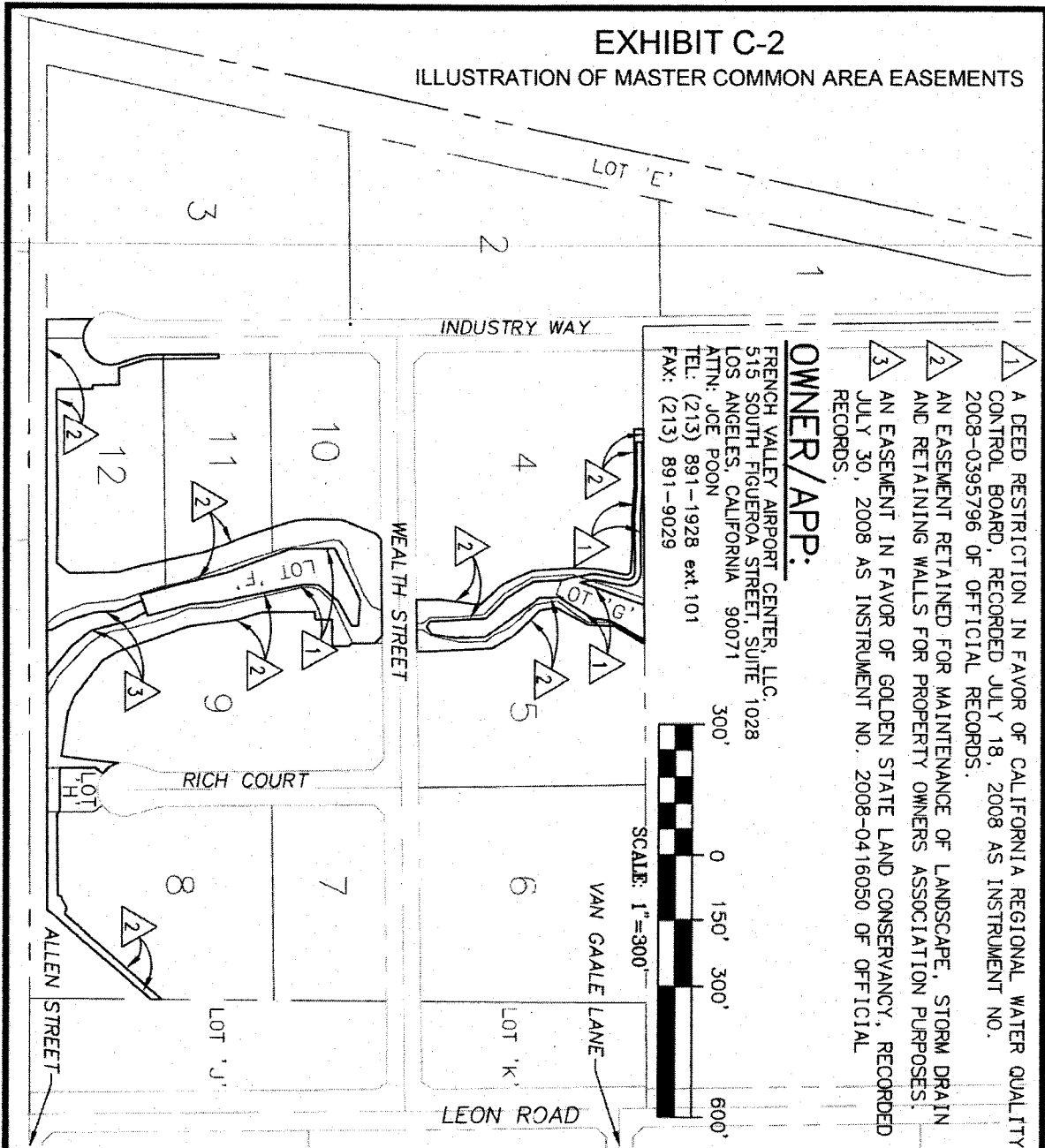
LOTS F G, K AND J OF PARCEL MAP NO. 33691 AS SHOWN ON A
SUBDIVISION MAP RECORDED _____, 20__ AT BOOK _____,
PAGES ____ TO _____, INCLUSIVE OF MAPS IN THE OFFICIAL
RECORDS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

PARCEL 2:

AN EASEMENT RETAINED FOR MAINTENANCE OF LANDSCAPE,
STORM DRAIN AND RETAINING WALLS FOR PROPERTY OWNERS
ASSOCIATION PURPOSES AS IDENTIFIED AND ILLUSTRATED ON
EXHIBIT C-2, ATTACHED HERETO.

EXHIBIT C-2

ILLUSTRATION OF MASTER COMMON AREA EASEMENTS



- 1 A DEED RESTRICTION IN FAVOR OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, RECORDED JULY 18, 2008 AS INSTRUMENT NO. 2008-0395796 OF OFFICIAL RECORDS.
- 2 AN EASEMENT RETAINED FOR MAINTENANCE OF LANDSCAPE, STORM DRAIN AND RETAINING WALLS FOR PROPERTY OWNERS ASSOCIATION PURPOSES.
- 3 AN EASEMENT IN FAVOR OF GOLDEN STATE LAND CONSERVANCY, RECORDED JULY 30, 2008 AS INSTRUMENT NO. 2008-0416050 OF OFFICIAL RECORDS.

OWNER/APP.

FRENCH VALLEY AIRPORT CENTER, LLC.
 515 SOUTH FIGUEROA STREET, SUITE 1028
 LOS ANGELES, CALIFORNIA 90071
 ATTN: JOE POON
 TEL: (213) 891-1928 ext.101
 FAX: (213) 891-9029



TEC TEMECULA ENGINEERING CONSULTANTS, INC.

LAND PLANNING, CIVIL ENGINEERING, CONSTRUCTION CONSULTANTS
 29377 RANCHO CALIFORNIA RD, STE. 202, TEMECULA, CA 92591
 * TELEPHONE 951-676-1018 * FACSIMILE 951-676-2294 *
 DATE: 1/19/17 JOB NO. 777-6

SHEET NO. 1 OF 1

COUNTY OF RIVERSIDE
 PM 33691 MASTER POA
 EASEMENT EXHIBIT

EXHIBIT D

APPROVED SUPPLEMENTAL DECLARATION
FOR ASSIGNMENT TO ASSOCIATION OF
MAINTENANCE PARTY'S RIGHTS AND OBLIGATIONS

EXHIBIT D

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:

JACKSON, DeMARCO, TIDUS &
PECKENPAUGH (FSJ)
2030 Main Street, 12th Floor
Irvine, California 92614

(Space Above for Recorder's Use)

**SUPPLEMENTAL DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR
FRENCH VALLEY AIRPORT CENTER**

(Assignment to Association of Maintenance Party Rights, Duties and Obligations)

EXHIBIT D

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR FRENCH VALLEY AIRPORT CENTER

THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR FRENCH VALLEY AIRPORT CENTER (this "**Supplemental Declaration**"), is made on the date written below by FRENCH VALLEY AIRPORT CENTER, LLC, a California limited liability company ("**Declarant**") in reference to that certain Declaration of Covenant, Conditions, Restrictions and Reservation of Easements for French Valley Airport Center recorded on July __, 2016, as Instrument No. 2016 _____ (the "**Declaration**"). Unless otherwise indicated, all capitalized terms used in this Supplemental Declaration are given the same meanings as in the Declaration. This Supplemental Declaration shall be interpreted according to the rules established in the Declaration, which is incorporated into this Supplemental Declaration by this reference, except that references to Sections in this Supplemental Declaration are to Sections of this Supplemental Declaration, not sections of the Declaration.

RECITALS

A. Declarant is the "Declarant" as defined in the Declaration.

B. In accordance with its rights under Section 4.2.1 of the Declaration, Declarant intends that this Supplemental Declaration conveys and assigns its interest, and delegates its duties and obligations, as the Maintenance Party to the Association.

NOW THEREFORE, this Supplemental Declaration is Recorded pursuant to Section 14.7 of the Declaration. This Supplemental Declaration is a part of the Restrictions with respect to all of the Covered Property.

1. **DEFINITIONS.** All capitalized terms used in this Supplemental Declaration and not otherwise defined herein shall have the meanings ascribe thereto by the Declaration. When the words and phrases are defined in the Supplemental Declaration, the terms used herein will supersede the meanings set forth in the Declaration.

2. **PROJECT GOVERNANCE; THE ASSOCIATION.** The following terms and provisions govern the formation and operation of the Association, and shall become part of the Declaration upon the Transfer Date:

a. **ARTICLES.** Articles means the Articles of Incorporation of the Association filed with the California Secretary of State on _____, 20__, as amended or restated from time to time in accordance with the Governing Documents of the Association.

b. **ASSOCIATION.** The Association means French Valley Airport Center Maintenance Corporation, a California nonprofit mutual benefit corporation, which was formed on _____, 20__ upon the filing of the Articles with the California Secretary of State.

EXHIBIT D

c. **BYLAWS.** Bylaws means the Bylaws of the Association as adopted by the Board on _____, 20____ or as hereafter amended or restated from time to time in accordance with the provisions thereof.

3. **ASSIGNMENT.** The undersigned hereby assigns and delegates to the Association all of its rights, title and interest as Responsible Party, together with all duties and obligations of the same, to the Association; provided, however, that the undersigned shall retain all other rights specifically reserved to Declarant under the Declaration.

4. **MISCELLANEOUS.** The provisions of this Supplemental Declaration shall run with all of the Covered Property, shall be binding upon all persons having or acquiring any interest in a Lot, or any part thereof, shall inure to the benefit of and burden every portion of the Covered Property, and any interest therein, and shall inure to the benefit of, be binding upon, and may be enforced by Declarant or by the Association. Except as otherwise expressly provided herein, all of the provisions of the Declaration are hereby incorporated by reference as if fully set forth herein.

[Signatures appear on the Next Page.]

EXHIBIT D

SIGNATURE PAGE TO
**SUPPLEMENTAL DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND RESERVATION
OF EASEMENTS FOR
FRENCH VALLEY AIRPORT CENTER**

Declarant has executed this Supplemental Declaration on _____, 20__.

DECLARANT

FRENCH VALLEY AIRPORT CENTER, LLC,
a California limited liability company

By: _____

Name: Chi-Hung Joseph Poon

Title: President

EXHIBIT D

ACKNOWLEDGEMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, 201__, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, 201__, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT E

**ALLOCATION OF PERCENTAGE SHARE
OF COMMON EXPENSES**

Condominium Unit

Percentage

I - 1	6.38850%
I - 2	6.75498%
I - 3	6.75498%
I - 4	7.85078%
I - 5	6.38850%
I - 6	6.75498%
I - 7	6.75498%
I - 8	7.90191%
I - 9	5.27931%
I - 10	5.38523%
I - 11	5.38523%
I - 12	6.05002%
I - 13	5.27931%
I - 14	5.38523%
I - 15	5.38523%
I - 16	6.30083%

Total: 100.00000%